

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1712

SPONSOR: Banking and Insurance Committee

SUBJECT: Governmental Reorganization

DATE: March 21, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that created the office of the Chief Financial Officer and to the 2002 act (ch. 2002-404, L.O.F.) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003. A separate bill, SB 1488, makes conforming changes related to the restructuring of the Cabinet pursuant to the constitutional amendment.

The 2002 act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the Chief Financial Officer, and the Financial Services Commission ("commission"), headed by the Governor and Cabinet. Two offices are created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission, except that the commission is agency head for all rulemaking of each office. The act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission, but did not make conforming changes to the Florida Statutes, which this bill addresses. Although the jurisdictional requirements of the 2002 act are clear on most issues, certain areas are unclear, pose difficult problems in conforming the statutes, or raise policy issues.

The Chief Financial Officer (or the Department of Financial Services) would be provided all state fiscal powers currently provided to the Treasurer or Comptroller. The bill consolidates all of the primary duties of accounting and auditing of state funds, and keeping all state funds and securities, in ch. 17, F.S., (Chief Financial Officer), amended to merge provisions of current ch. 17, F.S., (Treasurer) and ch. 18, F.S., (Comptroller).

The Department of Financial Services (headed by the Chief Financial Officer, or “CFO”) would also be authorized to: approve financial institutions as qualified public depositories; administer the Unclaimed Property Program; administer the Deferred Compensation program for state employees; have all duties of the State Fire Marshal; administer the state’s Risk Management (self-insurance) program; have powers of investigation and arrest of insurance fraud crimes; petition a circuit court for an order in a delinquency proceeding against an insurer or other risk-bearing entity, upon being required to do so by the Office of Insurance Regulation, and to be appointed as receiver, liquidator, or rehabilitator; approve plans of operation and have oversight responsibilities for insurance guaranty associations; license and regulate insurance agents and agencies, customer representatives, service representatives, viatical settlement brokers, reinsurance intermediaries, and bail bond agents; license and regulate cemeteries and pre-need funeral and burial contracts; administer the workers’ compensation act (ch. 440, F.S.), including enforcement of employer compliance, monitoring carrier compliance and sanctioning carriers for non-compliance, assisting employees with obtaining compensation, and approving and regulating individual self-insured employers and the guaranty fund for such employers; have the powers of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing; have authority provided to the Division of Consumer Services to receive inquiries and complaints related to insurance or financial institutions from consumers, to fine insurers and others who fail to respond to requests for information, to provide assistance and advocacy to consumers, and to prepare and disseminate information about regulated products and services; administer mediation of property insurance claims; administer insurance claims of Holocaust victims; have the CFO act as agent for service of process in all cases where the Insurance Commissioner so acted; receive notices of civil remedy actions against insurers and other entities; hold or arrange for financial institutions to hold statutory deposits of persons regulated by either DFS or the Office of Insurance Regulation; and to have all powers of the former Department of Insurance related to the Statewide Subscriber Assistance Program (which latter provision appears to not be in conformity with the 2002 act).

The Financial Services Commission and its Office of Financial Regulation would be provided substantially all of the regulatory (non-constitutional) powers and duties of the former Department of Banking and Finance. This includes all activities relating to the regulation of banks, credit unions, mortgage brokers and lenders, the securities industry, finance companies, retail installment sales providers, title lenders, collection agencies, check cashers, deferred presentment (“pay-day loan”) providers, money transmitters, certified capital companies, and other financial institutions.

The Financial Services Commission and its Office of Insurance Regulation would be authorized to have those powers and duties of the former Department of Insurance related to the regulation of insurers and other entities, including the authority to: license and regulate insurers, multiple-employer welfare arrangements, commercial self-insurance funds (including workers’ compensation group self-insurance funds), viatical settlement providers and contracts, purchasing groups and risk retention groups, fraternal benefit societies, warranty associations, prepaid limited health service organizations, health maintenance organizations, prepaid health clinics, legal expense corporations, and continuing care facilities; conduct financial and market conduct examinations of insurers; regulate financial and solvency of insurers, including administrative supervision of insurers; license and regulate insurance adjusters, administrators, service companies, and premium finance companies and agreements; approve eligible surplus

lines insurers; approve policy forms and rates for insurers; approve plans of operation and regulate joint underwriting associations (not including appointment of board members); approve donor annuity agreements; receive reports of claims information from insurers; and approve local government self-insurance plans for health coverage.

The bill also requires the Department of Financial Services and its two offices to *each* have an Office of Inspector General, and exempts each office from the requirement that written approval of the Attorney General be obtained before contracting with private attorneys.

The bill revises appointments to all boards and commissions for which appointments were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, for which most of such appointments are provided to the Chief Financial Officer.

The bill repeals the current laws (ss. 627.0623 and 655.019, F.S.) which limit campaign contributions to the Treasurer and Comptroller, respectively, and also repeals s. 624.305, F.S., which prohibits the Insurance Commissioner and employees of the Department of Insurance from having an financial interest in an insurer or agency. Other laws limiting campaign contributions and establishing standards of conduct for public officers and employees would still apply.

The bill also repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance; changes references from the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association to the Citizens Property Insurance Corporation (Citizens) to conform to the act creating Citizens; updates references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs; allows for electronic (Internet) filing of certain insurance-related filings; and amends the law specifying percentage voting requirements for elected officials who are members of the state executive committee of a political party (to conform to the re-structuring of the Cabinet).

This bill substantially amends the following chapters of the Florida Statutes: 11, 14, 15, 16, 17, 18, 20, 24, 25 26, 27, 28, 30, 40, 43, 48, 55, 57, 68, 77, 92, 99, 107, 110, 112, 116, 120, 121, 122, 125, 129, 131, 137, 145, 154, 163, 166, 175, 185, 189, 190, 191, 192, 193, 195, 198, 199, 203, 206, 210, 211, 212, 213, 215, 216, 217, 218, 220, 238, 250, 252, 253, 255, 257, 258, 259, 265, 267, 272, 280, 282, 284, 287, 288, 289, 292, 313, 314, 316, 320, 322, 324, 326, 331, 336, 337, 339, 344, 350, 354, 365, 370, 373, 374, 376, 377, 378, 381, 388, 391, 392, 393, 394, 400, 401, 402, 403, 404, 406, 408, 409, 411, 413, 414, 420, 430, 440, 443, 447, 450, 468, 473, 475, 489, 494, 497, 498, 499, 501, 507, 513, 516, 517, 518, 519, 520, 526, 537, 548, 550, 552, 553, 554, 559, 560, 561, 562, 567, 569, 570, 574, 589, 597, 601, 607, 609, 617, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 641, 642, 648, 650, 651, 655, 657, 658, 660, 663, 665, 667, 687, 713, 716, 717, 718, 719, 721, 723, 732, 733, 744, 766, 768, 790, 791, 817, 839, 849, 860, 896, 903, 925, 932, 938, 939, 943, 944, 946, 947, 950, 957, 985, 1000, 1001, 1002, 1003, 1004, 1006, 1008, 1009, 1010, 1011, and 1012.

The bill creates the following sections of the Florida Statutes: 17.001, 17.002, and 626.016.

The bill transfers and amends Florida Statutes in chapter 18 to chapter 17, and transfers and amends s. 627.3111, to s. 624.23.

The bill repeals the following sections of the Florida Statutes: 17.06, 18.03, 18.09, 18.22, 20.12, 20.13, 440.135, 624.305, 624.4071, 624.463, 627.0623, 627.3516, 627.7825, 655.019, 657.067, 657.25, and 657.251-657.269.

II. Present Situation:

Constitutional Amendment Creating the Office of the Chief Financial Officer

In 1998, Florida voters approved an amendment to the State Constitution abolishing the offices of the Treasurer and the Comptroller and merging their duties into the office of the Chief Financial Officer, effective January 7, 2003.¹ The amendment provides that the Cabinet shall be composed of the Attorney General, the Chief Financial Officer (CFO), and the Commissioner of Agriculture. The CFO serves as the chief fiscal officer of the state, responsible for settling and approving all accounts against the state and keeping all state funds and securities. The Legislature may, by law, prescribe additional powers and duties for the CFO and other Cabinet officers, as the State Constitution previously allowed for the Treasurer, Comptroller, and other Cabinet officers.

The Legislature, by general law, had designated the Comptroller as head of the Dept. of Banking and Finance, responsible for the regulation of banks, financial institutions, and the securities industry. General law designated the Treasurer as the Insurance Commissioner and head of the Dept. of Insurance, responsible for regulating all insurance matters. The Insurance Commissioner was also designated as the State Fire Marshal. By abolishing the offices of the Treasurer and Comptroller, the constitutional amendment effectively required the Legislature to reassign the statutory duties for the regulation of banking and insurance to the CFO or to other executive branch agencies or officials.

2002 Act Reorganizing the Regulation of Banking and Insurance

Legislation enacted in 2002 (“the 2002 act”) reassigned the statutory duties of the Comptroller and Treasurer to the newly created Dept. of Financial Services, headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003.² The key provision is s. 20.121, F.S., created by the 2002 act, which prescribes the organizational structure and regulatory duties of the department and commission. The act transferred the programs, employees, and trust funds of the Dept. of Insurance and the Dept. of Banking and Finance to the new department and commission. However, the act did not make conforming changes to the Florida Statutes, which legislative staff and a transition committee were directed to address.

¹ Art. IV, Sec. 4, Fla. Const.

² Ch. 2002-404, L.O.F. (HB 3-E, passed in the 2002 Special Session “E,” and signed by Governor Bush on June 12, 2002).

Department of Financial Services (headed by Chief Financial Officer); Statutory Jurisdiction

The 2002 act created the Department of Financial Services (DFS) headed by the CFO, and specified that DFS consist of the following divisions³:

- Division of Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- Division of State Fire Marshal
- Division of Risk Management
- Division of Treasury (which includes the Bureau of Deferred Compensation)
- Division of Insurance Fraud
- Division of Rehabilitation and Liquidation
- Division of Insurance Agents and Agency Services
- Division of Consumer Services (which includes the Bureau of Funeral and Cemetery Services)
- Division of Workers' Compensation
- Division of Administration
- Division of Legal Services
- Division of Information Systems
- Office of Insurance Consumer Advocate

Other than listing the above divisions within DFS, s. 20.121, F.S., does not specify the statutory powers or duties of DFS. But, these divisions were previously within the Dept. of Insurance or the Dept. of Banking and Finance and the 2002 act transferred these divisions or related programs to DFS (and renamed the Division of Insurance Consumer Services as the Division of Consumer Services), reflecting the Legislature's intent to authorize DFS to exercise the statutory powers and duties administered by these divisions and programs.⁴

The major statutory jurisdiction which is reasonably included within each division that was assigned to the Dept. of Financial Services (headed by the CFO) is listed below (not including other duties discussed in *Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*, below):

- Division of Accounting and Auditing:
 - Accounting, auditing, and approving payment of state funds (ch. 17, F.S., et al.); general financial powers of Comptroller (chs. 215, 216, 287, F.S., et al.)
 - Administration of the unclaimed property program (ch. 717, F.S.)
- Division of State Fire Marshal:
 - Regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for

³ S. 20.121(2)(a), F.S.

⁴ S. 3, ch. 2002-404, L.O.F. Each of the divisions and related programs transferred to DFS were transferred from the Department of Insurance, except the Division of Accounting and Auditing (including the Bureau of Unclaimed Property and the Office of Fiscal Integrity) and the Bureau of Funeral and Cemetery Services, which were transferred from the Department of Banking and Finance.)

- firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)
- Division of Risk Management:
 - Administer the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, 766.28, F.S.)
 - Division of Treasury:
 - Coordinate and direct the keeping of all state funds and securities, disburse payment of state funds, and invest surplus state funds collected by state agencies (ch. 18, F.S., et al.)
 - Approve financial institutions as public depositories (ch. 280, F.S.)
 - Administer the deferred compensation program for state employees (s. 112.215, F.S.)
 - Division of Insurance Fraud:
 - Investigation and arrest of insurance fraud crimes (ss. 626.989, 626.9892, F.S.)
 - Division of Rehabilitation and Liquidation:
 - Acting as court-appointed receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, F.S., et al.)
 - Division of Insurance Agents and Agency Services:
 - License and regulate insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.)
 - Division of Consumer Services:
 - Receive inquiries and complaints from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services (no specific statutory authority, other than for publications)
 - Bureau of Funeral and Cemetery Services - licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
 - Division of Workers' Compensation:
 - Administer the workers' compensation act: enforce employer compliance, monitor carrier compliance; and assist employees with obtaining compensation (ch. 440, F.S.)
 - Office of Insurance Consumer Advocate:
 - Represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
 - Division of Administration (no specific statutes)
 - Division of Legal Services (no specific statutes)

Statutes Implementing Constitutional Duties of Chief Financial Officer - Currently, ch. 17, F.S., prescribes the duties of the Comptroller regarding the accounting and auditing of state funds, and ch. 18, F.S., prescribes the duties of the Treasurer regarding the holding, investing, and payment of state funds. These two chapters address the core constitutional duties of the two offices, which have not yet been consolidated or revised to apply to the CFO, even though the CFO has

constitutionally assumed these duties. This was further implemented by the 2002 act by assigning the Division of Treasury (formerly under the Treasurer) and the Division of Accounting and Auditing (formerly under the Comptroller) to DFS, headed by the CFO.

The current statutes provide that the Comptroller approves the expenditure of funds, which triggers the duty of the Treasurer to issue payment, both of which functions are now done solely by the CFO. A certain degree of inter-agency accountability is necessarily lost by virtue of the merger of the two offices, but the statutory requirement for DFS to have both a Division of Treasury and a Division of Accounting and Auditing provides a means for intra-agency accountability. For example, s. 18.08, F.S., currently requires that the Treasurer turn over to the Comptroller all warrants drawn by the Comptroller and paid by the Treasurer. One option is to repeal this section, but another option is to amend the law to require the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the CFO and paid by the Division of Treasury. (See, *Effects of Proposed Changes*, for more information on current fiscal duties affected by this bill.)

Financial Services Commission (The Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation)

The 2002 act created the Financial Services Commission (“commission”) within DFS. The commission consists of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, i.e., the Governor and Cabinet, as constituted on January 7, 2003. Three votes are required for any commission action. The act provides:

*The commission shall be a separate budget entity and shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.*⁵

Two “Offices” are created under the commission:

- The Office of Insurance Regulation (OIR)
- The Office of Financial Institutions and Securities Regulation (OFISR)

Each office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO must concur in appointment and removal. On January 9, 2003, the commission appointed directors for each of these two offices. (The director for OIR was appointed on an interim basis for a 90-day period.) The commission and the directors of each office share responsibility for final agency action. The commission acts as agency head for purposes of *rulemaking* under ss. 120.536-120.565, F.S., while the directors are each agency head for other final agency actions under ch. 120 for all areas within the regulatory authority of their office.⁶

⁵ S. 20.121(3), F.S.

⁶ S. 20.121(3)(c), F.S.

Statutory Jurisdiction of the Office of Financial Institutions and Securities Regulation

The 2002 act provides that the Office of Financial Institutions and Securities Regulation:

....shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.⁷

The responsibilities of OFISR, quoted above, generally encompass all of the statutory duties previously delegated to the Dept. of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Dept. of Financial Services. Listed below are the subject areas and statutory jurisdiction that were previously delegated to the Dept. of Banking and Finance, and are now reasonably within the jurisdiction of OFISR:

- Mortgage Brokers, Lenders and Mortgage Companies (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)
- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons (ch. 517, F.S.)
- Retail Installment Sales Providers (motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers; ch. 520, F.S.)
- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters (including check cashers, foreign currency exchanges, and deferred presentment provider; ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Certified Capital Companies (s. 288.99, F.S.)

Statutory Jurisdiction of the Office of Insurance Regulation

The 2002 act provides that the Office of Insurance Regulation:

... shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing,

⁷ S. 20.121(3)(a)2., F.S.

*and administrative supervision of insurers, as provided in the Florida Insurance Code or ch. 636.*⁸

The powers and duties of OIR, quoted above, encompass insurance regulatory powers that were *not* assigned to DFS (by virtue of the divisions assigned to DFS). The 2002 act also transferred the Division of Insurer Services from the Dept. of Insurance to OIR, which division administered almost all of the activities quoted above. The act also transferred to OIR those portions of the Division of Agents and Agency Services that implement functions assigned to OIR, which primarily refers to activities concerning *adjusters*, who were licensed by that division. Also, the act transferred to OIR those positions within the DOI's Division of Legal Services whose responsibilities involve the functions assigned to OIR.

The act provides that OIR is responsible for all activities concerning insurers and other risk bearing entities. There is no statutory definition of *risk bearing entities*, but the Florida Insurance Code requires licensure or certification of various entities which provide a type of *insurance* as that term is defined in s. 624.02, F.S. In addition, outside of the Insurance Code various provisions authorize the Dept. of Insurance to approve certain plans of self-insurance. The major statutory jurisdiction and duties of OIR would reasonably include the following, as formerly delegated to the Dept. of Insurance (not including other duties discussed in *Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*, below):

- Issuance of certificates of authority or licenses to, and regulation of:
 - Authorized insurers (ss. 624.401-430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
 - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
 - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
 - Viatical settlement providers and contracts (ss. 626.991-626.99295, F.S.)
 - Purchasing groups and risk retention groups (ss. 627.941-627.955)
 - Fraternal benefit societies (ch. 632, F.S.)
 - Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
 - Prepaid limited health service organizations (ch. 636, F.S.)
 - Health maintenance organizations (ch. 641, part I., F.S.)
 - Prepaid health clinics (ch. 641, part II, F.S.)
 - Legal expense corporations (ch. 642, F.S.)
 - Continuing care facilities (ch. 651, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-.9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)

⁸ S. 20.121(3)(a)1., F.S.

- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members previously appointed by the Insurance Commissioner), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, and the Florida Birth-Related Neurological Injury Compensation Association, and other JUAs, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)
- Approval of local government self-insurance plans for health coverage (s. 110.08, F.S.)

Areas Where Jurisdiction of the Department of Financial Services and the Office of Insurance Regulation is Unclear or Overlaps

Even though the 2002 act is clear on most jurisdictional issues, certain areas may be unclear, pose difficult problems in conforming the statutes, or raise policy concerns, as discussed below.

Receivership proceedings; guaranty funds - The act delegates to OIR the responsibility for all Insurance Code activities concerning insurers, including solvency and administrative supervision. But, DFS is assigned the Division of Insurer Rehabilitation and Liquidation. This indicates the Legislature's intent that OIR make the determination that a carrier has been rendered insolvent and to petition a court for an order to appoint a receiver to liquidate the insurer's assets, but that DFS be appointed as the receiver and handle the receivership from that point forward. The related powers of the former Dept. of Insurance in ch. 631, F.S., must be carefully reviewed and amended, accordingly. A related decision is whether attorneys employed by DFS or OIR go to court to seek the receivership order or to what extent OIR should consult with DFS prior to seeking the receivership order. Another issue is the oversight of the various insurance guaranty associations which pay claims of insolvent insurers. Given their central role in the rehabilitation and liquidation process, authorizing DFS to approve plans of operation and oversee the various insurance guaranty associations appears consistent with its jurisdiction.

Service of Process - The Insurance Commissioner is the statutorily designated agent for service of process for various persons in the insurance arena. A distinction could be made to make the Director of OIR and the CFO each agents for service of process for persons related to each one's jurisdiction. But it may be preferable to have one office for service of process, given its ministerial nature and for reasons of efficiency and minimizing confusion to the public.

General Powers - The law provides certain general powers to the former Dept. of Insurance, most of which are in part I of ch. 624, such as the authority to have an official seal (s. 624.303, F.S.), to publish and disseminate information (s. 624.307(4), F.S.), duties with respect to maintenance and destruction of records (s. 624.312, F.S.), the authority to employ actuaries as at-will employees, (s. 624.307(6), F.S.), and others. More importantly, there are general enforcement powers, such as s. 624.310, F.S., which provide powers to DOI to issue cease and desist orders against persons who violate the Insurance Code, to order the removal of affiliated

parties, and to impose administrative fines under certain circumstances. Such enforcement powers are needed (and currently assumed) by both DFS and OIR, but limited to the persons they each regulate, which conforming legislation must clarify.

Administrators and Service Companies - The act provides for OIR to regulate risk-bearing entities and insurance adjusters and for DFS to regulate insurance agents (by being assigned the Division of Agent and Agency Services). However, the regulation of administrators and service companies (ss. 626.88-626.899, F.S.) is not clearly in either category. An administrator is a person who solicits or effects coverage, collects premiums, or adjusts or settles claims, in connection with insured or self-insured programs which provide life or health coverage. A service company performs these same functions but does not control funds.⁹ Neither appears to be a “risk-bearing entity” and both perform functions similar to an agent, which may argue for regulation by DFS. But, both are currently licensed under DOI’s Division of Insurer Services and perform functions similar to an insurance adjuster, which argues for regulation by OIR.

Viatical settlement brokers: Unlike viatical settlement providers who are risk assuming entities, viatical settlement brokers are similar to insurance agents. The 2002 act assigned regulation of insurance agents to DFS which may include regulation of viatical settlement brokers. But, the act also assigned regulation of *viatical settlements* to OIR, which could be interpreted to include both brokers and providers.

General powers related to agents and adjusters (and other licensees under ch. 626, F.S.) - The authority for OIR to regulate insurance adjusters, distinct from the authority for DFS to regulate insurance agents, affects a number of provisions in ch. 626, F.S., which currently authorize the Dept. of Insurance to regulate both. Since many of the current statutes apply to both agents and adjusters, DFS and OIR are apparently provided authority that is limited to the licensure category that they each regulate, which needs to be clarified in conforming legislation. This also affects other licensure categories in this chapter for which jurisdiction may be unclear, such as administrators, service companies, and viatical settlement brokers, as discussed above.

Unfair Insurance Trade Practice Violations - Section 626.9541, F.S., lists various prohibited acts, commonly known as unfair insurance trade practices. In some cases, this law applies to persons who are not licensed by the Dept. of Insurance, but the department is authorized to take enforcement actions relative to such persons. For example, it is unlawful for any person to offer free insurance as an inducement to the purchase of property or services. With insurance jurisdiction split between DFS and OIR, it may not be clear where the authority lies to pursue a given violation.

Division of Consumer Services - The 2002 act assigned the Division of Consumer Services to DFS. The division was transferred from the Dept. of Insurance and renamed, formerly called the Division of Insurance Consumer Services. This indicated the Legislature’s intent that the division handle consumer complaints related to financial institutions and securities, as well as insurance, which is also what the Committee on Transition Management (discussed below) assumed. But, except for s. 21.121, F.S., there is no statute that cites this division (by either name). In practice, this division receives inquiries and complaints from consumers, requests

⁹ Section 626.88(1), F.S., defines *administrator*, and s. 626.895, F.S., defines *service company*.

insurers to submit a written response, and attempts to resolve the complaint, which is not addressed in statute. (The division also prepares and disseminates information as to insurance products or services, which the statutes do address.) According to DFS, prior to the reorganization of the Dept. of Insurance, the Division of Consumer Services could fine an insurer up to \$2,500 for each nonwillful failure to respond and up to \$20,000 for each willful failure to respond to the Division's investigation of a consumer complaint, which are the maximum fines allowed in s. 624.4211, F.S. But, any sanctions against insurers that arose from consumer complaints or otherwise were handled by other divisions in DOI, and now appear to be within the authority of OIR.

Statewide Provider and Subscriber Assistance Program - Current law (s. 408.7056, F.S.) establishes a panel to assist subscribers who have unresolved grievances with managed care entities, defined to include HMOs, prepaid health clinics, and health insurers issuing exclusive provider contracts.. The panel includes employees of the Dept. of Insurance (DOI) and the Agency for Health Care Administration (AHCA), among others. The panel holds hearings and makes recommendations to DOI or ACHA for any actions that should be taken. ACHA or DOI may adopt the panel's recommendation in a proposed order or an emergency order, which it issues to the managed care entity, which may include a requirement for the managed care entity to take a specific action, may include fines or sanctions specified in the HMO laws (ss. 6141.25 and 641.51, F.S.), or may be an emergency order in cases having an imminent and emergent jeopardy to the subscriber's life. Or, AHCA or DOI may reject all or part of the panel's recommendations. It may be unclear whether employees of OIR, which assumes DOI's duties of regulating HMOs, or employees of DFS, which are assigned the Office of Insurance Consumer Advocate, or both, should be on the panel. Until further addressed by the Legislature, this may be an "appointment" by the Insurance Commissioner that the CFO is authorized to make until June 30, 2003. (See, *Membership and Appointments to Boards and Commissions*, below.) However, any sanctions or other actions taken after the panel has issued its recommendations, would appear to be within the jurisdiction of OIR as a matter relating to regulation of a risk-bearing entity.

Monitoring of Workers' Compensation Insurers - The 2002 act transferred the Division of Workers' Compensation to DFS, but made OIR responsible for *market conduct examinations* and *all activities concerning* insurers, effective January 7, 2003. Prior to that transfer, a different 2002 act transferred the same division from the Dept. of Labor and Employment Security (DLES) to the Dept. of Insurance, effective July 1, 2002.¹⁰ That act also amended ss. 440.13 and 440.20, F.S., to require that monitoring or market conduct examinations of workers' compensation insurers be conducted pursuant to s. 624.3161, F.S., which provides the requirements for market conduct examinations of insurers by DOI. However, certain provisions in ss. 440.13 and 440.20, F.S., authorize DOI (and previously authorized DLES) to monitor carrier payments, to establish standards for compliance, to determine non-compliance, and to fine insurers for late payments, without making specific reference to the market conduct examination statute. Although the role of OIR to conduct market conduct examinations of insurers is clear, it is less clear to what extent DFS also has powers to monitor, examine,

¹⁰ Ch. 2002-194, L.O.F. The act abolished the Dept. of Labor and Employment Security and transferred its functions to multiple agencies.

establish standards, or sanction carriers for late payments and other matters of non-compliance under ch. 440, F.S.

Authorization of employers to self-insure for workers' compensation - The authority for OIR to regulate risk assuming entities and for DFS to assume the responsibilities of the Division of Workers' Compensation raises the question of which office approves employers to be self-insured for workers' compensation coverage (including public utility self-insurance programs) under s. 440.38, F.S. This was formerly done by the Division of Workers' Compensation under DLES and DOI, which indicates that this task is assumed by the same division under DFS. Similarly, DFS would appear to assume the oversight responsibilities of the division with respect to the Florida Self-Insurers Guaranty Association, which guarantees payment of workers' compensation claims for insolvent self-insured employers, which was also the responsibility of the division under DLES.

Administration of deposits of cash or securities; surety bonds - Various provisions of the Insurance Code require insurers and other licensed entities to deposit cash or eligible securities with the Dept. of Insurance. In some cases, a surety bond is allowed as an alternative. Depending on the particular statute, the law may authorize the department to approve the amount and type of security used, specify the conditions for returning the deposit, and determine if the licensee has met such conditions. But, the statutes do not currently distinguish between the role, in practice, of the Division of Treasury to hold the deposit or make arrangements with qualified public depositories to hold the deposit, and the role of the Division of Insurer Services or other division that issued the license to determine whether the statutory requirements for the deposit are met. Surety bonds, on the other hand, have been administered solely by the division that issued the license, for which the Division of Treasury has had no role.

Under the 2002 act, these duties regarding deposit requirements appear to be divided between DFS which was assigned the Division of Treasury, and OIR which was assigned the Division of Insurer Services and is responsible for regulating insurers and risk-bearing entities. This does not create significant practical problems, since these duties were functionally divided between divisions under DOI, but the statutes must now distinguish the duties of DFS and OIR because there are different agency heads for each.

Issues Related to Status of the Offices (OIR and OFISR) as Separate "Agencies"

Office of Inspector General - Section 20.055, F.S., establishes the Office of Inspector General in each *state agency*, defined in that section as each department created pursuant to ch. 20, F.S., and other specified agencies. The Inspector General must be appointed and removed by the agency head defined as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), or an executive director as defined in s. 20.03(6), F.S., with certain exceptions. It may not be clear whether the Dept. of Financial Services is considered a single agency for purposes of this section. If DFS is considered a single state agency for this purpose, it would have one Inspector General for the department and both regulatory offices. This raises the policy issue of considering other options of having two Inspector Generals (one under the department, and one under the commission responsible for both offices) or three Inspector Generals (one for the department, and one for each office). See *Committee of Transition Management*, below, for what the Financial Services Commission has approved at this time.

Contracts with Private Attorneys - Section 287.059(2)(a), F.S., currently provides that written approval of the Attorney General is required before an agency may contract with private attorneys to handle state business. However, there are exemptions for the Executive Office of the Governor or any department under the exclusive jurisdiction of a single cabinet officer, which applied to DOI (under the Insurance Commissioner) and DBF (under the Comptroller). Since the two offices under the Financial Services Commission are clearly not under the exclusive jurisdiction of a single cabinet officer, the offices no longer have the advantage of this exemption.

Membership and Appointment to Boards and Commissions

The 2002 act provides legislative intent that from January 7, 2003, until June 30, 2003, the statutory responsibility for appointments to commissions, boards, associations, councils, committees, or other collegial bodies, that were vested in the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, shall become the responsibility of the CFO.¹¹ A conforming bill must delegate continuing appointment authority for each of these boards and commissions. Issues to consider are whether the CFO should appoint only one or two members in those cases where the Treasurer and Comptroller each appointed one member, and whether any appointments should be made by a different officer that may have a closer jurisdictional tie to a particular commission than the CFO. Currently, employees of the Dept. of Insurance are designated as members of certain boards or councils, which may be considered an “appointment,” which raises the issue of whether an employee of DFS or OIR should be a member, regardless of whether the CFO continues to make the appointment. (See, *Effects of Proposed Changes*, below, for more detail on each board and commission addressed by this bill.)

Campaign Contribution Limitations; Prohibited Financial Interests

Campaign contribution limitations-- Section 627.0623, F.S., prohibits insurers and their officers and affiliates from making a campaign contribution in excess of \$100 to the Treasurer or any candidate for that office and prohibits any employee of the DOI from soliciting a campaign contribution for the Treasurer or any candidate for that office from any insurer or affiliate. Similarly, s. 655.019, F.S., prohibits any financial institution which is licensed pursuant to chapters 655-665, F.S., and its officers and affiliates from making a campaign contribution in excess of \$100 to the Comptroller or any candidate for that office, and prohibits any employee of the DBF from soliciting a campaign contribution for the Comptroller or any candidate for that office from any licensee or person who has an application pending for licensure.

These prohibitions no longer apply to the office of the CFO or employees of the DFS. Comments made by bill sponsors indicated that such restrictions would no longer be necessary, since the primary insurance and banking regulation would be under professional appointees (directors of OIR and OFISR), rather than elected officials. Repealing these laws would be consistent with this intent. Reenactment of an amended law would require the Legislature to consider whether similar restrictions should be applied to the CFO, or to the Governor and each Cabinet officer, given the commission’s power to adopt rules and to appoint the directors of OIR and OFISR.

¹¹ S. 8, ch. 2002-404, L.O.F.

Prohibited financial interests - Section 624.305, F.S., prohibits the Insurance Commissioner and Treasurer and any employee of the Dept. of Insurance from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside compensation for services rendered as a department employee. Issues to consider are whether to repeal the current restrictions, or whether to amend them to apply to the employees of DFS and/or OIR, and whether they should be applied to the CFO and/or the members of the commission (the Governor and Cabinet), given the commission's power to adopt rules and to appoint the director of OIR. If the restrictions are applied to all DFS and OIR employees, it may also be considered whether an extended time to comply should be provided for employees who were not previously subject to this law.

No similar statute specifically prohibits employees of DBF from having a financial interest in entities regulated by DBF. However, all public officers and employees are subject to the requirements of part III of chapter 112, the Code of Ethics for Public Officers and Employees. The main section is s. 112.313, F.S, which establishes standards of conduct for public officers and employees of agencies relative to solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, salary and expenses, misuse of public position, conflicting employment or contractual relationships, disclosure or use of certain information, and post-employment restrictions. This part also requires disclosure of financial interests in s. 112.3144, F.S.

Committee of Transition Management; Draft Legislation; Interim Project

The 2002 act created the Committee of Transition Management ("Transition Committee"), with one member each appointed by the Governor, the Comptroller, the Treasurer, the chair of the Senate Appropriations Committee, and the chair of the House Fiscal Responsibility Council. The committee was charged with overseeing the transition of the affected agencies and to provide a written report specifying the placement of those positions that are transferred, submit to the commission a proposed organization plan, and provide written recommendations by February 1, 2003, as to statutory changes to facilitate the operations of the department. The act further directed the relevant substantive committees of the Senate and the House to prepare draft legislation to conform the Florida Statutes to the act.¹²

The Transition Committee held five meetings during the interim, devoting its efforts to determining a proposed organizational plan for DFS, the commission, OIR, and OFISR, and the assignment of specific positions from DOI and DBF to the affected agencies. Questions arose regarding the degree of organizational autonomy that should be provided to the commission and its two offices, independent from DFS, given the 2002 act's provision that *the commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters*. But, the act also provides that the commission is within the department, that the department shall provide administrative and information systems support to the offices, and that the commission has the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability. This raised issues of whether the

¹² S. 6, ch. 2002-404, L.O.F.

commission or its offices should organizationally control its own administrative functions, such as budgeting, personnel management, financial and support services, communications, and legislative affairs.

The Transition Committee held its last meeting in November 2002, having generally agreed on most organizational and personnel issues. On January 21, 2003, the committee submitted its final report. On January 28, 2003, the Financial Services Commission accepted the recommendations of the report and on February 25, 2003, initiated rulemaking to adopt the organizational structure. The report of the Transition Committee noted eight "Matters of Debate," as follows:

"1. Division of Administration - Overall a reduction in positions could be accomplished through the merger. House Bill 3E clearly adopted the Division under the Chief Financial Officer to provide administrative support for both the Chief Financial Officer and Offices of Insurance Regulation and Financial Institutions and Securities Regulation. Combined, the division will consist of 115 positions, with a proposal to eliminate 10 percent (11.5) positions by June 30, 2003.

2. Division of Information Systems - No immediate reduction in positions is recommended during FY 2002-03 due to the replacement of the FLAIR System.

3. Division of Legal Services - No immediate reduction in positions. In both the Department of Insurance and the Department of Banking and Finance, some attorney positions were transferred to the Chief Financial Officer. We believe we have made the right allocations of duty, however, the next 6 months will provide time to determine if human resources are appropriately allocated among the department and the commission.

4. Inspector General - No immediate reduction in positions. At the department level, the Department of Financial Services' Inspector General will designate a member of the Office of IG to be the "Designated IG" for matters pertaining to the two regulatory offices. When IG services are performed for the offices, the Designated IG reports to the respective Directors and not to the CFO's Inspector General or to the CFO. For matters under the authority of the Chief Financial Officer, the Inspector General and subordinates report to the CFO. The Financial Services Commission may assign the work of the Inspector General as required to one of the existing Inspector Generals (of the Governor, Chief Financial Officer, Attorney General or Agriculture Commissioner). There is some conflict with the statutes regarding inspectors general and this will have to be resolved in a glitch bill.

5. Communications Officer

6. Legislative Affairs

7. Cabinet Affairs

For Communications, Legislative Affairs and Cabinet Affairs, the Committee recommends that the Office of the Insurance Regulation and the Office of Financial [Institutions] and Securities Regulation were allocated an equal, but minimal number of positions to distribute the duties of the above units. The units under the authority of those Offices shall assume some of the duties of the Cabinet, Legislative and Communications offices, until a need determination can be made by the appointed directors of the Offices.

As stated above, House Bill 3E provides for independence of the Financial Services Commission and the units under their control. Therefore, it is recommended that the Office of Insurance Regulation and Office of Financial Institutions and Securities Regulation allocate existing positions for budget, purchasing, and for personnel, as they deem necessary.

8. Division of Securities and Finance

Regulatory responsibilities relating to licensing within the existing Division of Securities and Finance will be divided into two functional areas. The first area will be those regulatory responsibilities related to licensing under the proposed Bureau of Regulatory Review within the Office of Financial Institutions and Securities Regulation and the second under the Chief Financial Officer, Bureau of Agents and Agency Licensing. This was a matter of some debate among the Committee. A final vote of three to two resulted in this recommendation. The division of responsibilities is described in detail below.

Chief Financial Officer, Bureau of Agents and Agency Licensing -- Responsibilities for this Bureau will include securities dealer associated persons and investment advisor representative registrations, registrations for associated persons of federally covered investment advisors and filing responsibilities to include public records requests. Finance licensing responsibilities will include mortgage brokers, mortgage broker testing, and pre-need sales agents. Amendments to individual licenses and certain firm and individual renewals will also be handled in this area. These will be administrative in nature and will not require the material review of an application other than the processing paperwork and receipt of renewal fees. These responsibilities will continue to be carried out by existing staff.

Office of Financial Institutions and Securities Regulation, Bureau of Regulatory Review -- The proposed Bureau of Regulatory Review will manage the functions of the Office of Financial Institutions and Securities Regulation. Responsibilities of the Bureau will include all business registrations for securities, money transmitters, finance companies, retail installment companies, home improvement companies and collections agencies. The Bureau will also be responsible for special reviews of securities and finance agency applications. Agency actions and denial will be preserved under the Office of Financial Institutions and Securities Regulation for appropriate actions and remedies.

It is recommended that an Inter-Agency Agreement be developed between the respective areas of the Chief Financial Officer and the Office of Financial Institution and Securities Regulation delegating and or defining processing responsibilities within the respective agencies.” (Report of the Committee of Transition Management for the Department of Financial Services, January 21, 2003.)

The Banking and Insurance Committee was assigned an interim project to report on the transfer of the affected agencies and to prepare draft legislation to conform to the 2002 act. The report, *The Office of the Chief Financial Officer and the Transfer of the Department of Insurance and the Department of Banking and Finance to the Department of Financial Services* (Interim Project Report 2003-109, January 2003), was presented at the January 8, 2003, committee meeting. This bill (and SB 1488, addressing Cabinet-related issues) are the committee bills that

conform to the 2002 act. The proposed legislation was initially developed by legislative staff of the Banking and Insurance Committee in meetings with staff of the House of Representatives and the affected agencies, with the objective of being consistent with the 2002 act and to attempt to reach consensus on as many issues as possible, which was substantially achieved, recognizing that certain jurisdictional areas are unclear.

Citizens Property Insurance Corporation

Legislation was enacted in 2002 which created the Citizens Property Insurance Corporation (Citizens), which assumed the operations of the former Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).¹³ Citizens is now the only state-created, residual market insurer that provides residential property insurance or windstorm coverage to persons unable to obtain coverage from an authorized insurer. However, most statutory references to the RPCJUA and the FWUA were not changed by last year's act. It is assumed that the Legislature intended for such laws to apply to Citizens. (See, *Effects of Proposed Changes*, below, for more detail on the current law and the changes made.)

Political Parties - Voting Percentages for Members of State Executive Committee

Section 103.091, F.S., provides that if a political party allows any member of the state executive committee to have more than one vote, than certain elected officials who are members of that political party must have a specified percentage of the votes. The current law provides that the Comptroller and Treasurer each must have 5 percent of the vote, which is the same percentage provided to other (former) members of the Cabinet, as it existed prior to January 7, 2003, including the Lieutenant Governor, the Attorney General, the Commissioner of Agriculture, the Secretary of State, and the Commissioner of Education. The Governor must be provided 15 percent of the votes, each member of the U.S. Senate must receive 10 percent of the votes, the president of the Senate receives 10 percent, the minority leader of the Senate receives 10 percent, the Speaker of the House of Representatives receives 10 percent, the minority leader of the House of Representatives receives 10 percent, and each member of the U.S. House of Representatives receives 1 percent. The percentages are not required to add up to 100% or any other total, which is unknown, given the political party of each such official.

III. Effect of Proposed Changes:

Organizational Structure; Key Terms and Definitions

The bill maintains the current statutory organization of the Florida Insurance Code, the financial codes, and other laws. The only major reorganization is the merger of ch. 17, F.S., (Comptroller) and ch. 18, F.S., (Treasurer) into a single, amended ch. 17 to apply to the Chief Financial Officer.

The key terms used in the bill are:

¹³ Ch. 2002-240, L.O.F. , amending s. 627.351, F.S.

- *Chief Financial Officer* (no definition needed)
- *department* (defined as Department of Financial Services)
- *commission* (defined as Financial Services Commission)
- *office* (defined as either the Office of Insurance Regulation *or* the Office of Financial Regulation, depending on its statutory location). **The bill changes the name of the Office of Financial Institutions and Securities Regulation (OFISR), as created in the 2002 act, to the Office of Financial Regulation (OFR).**

The bill uses the term, *Chief Financial Officer*, primarily for those duties that are directly related to constitutional state fiscal powers of the CFO, for which the current law typically uses *Treasurer* or *Comptroller*, or duties that are clearly personal in nature, such as appointment powers.

The bill defines the term *department* to mean the Department of Financial Services in various places in the Florida Statutes where the term is currently defined as either the Department of Insurance or the Department of Banking and Finance. This is done for those matters that are now within the jurisdiction of DFS (headed by the CFO). Since the CFO is the agency head for DFS, the terms *department* and *Chief Financial Officer* generally have the same meaning.

Note there are many provisions of the Florida Statutes, including entire sections, using the term *department* that are **not amended** by this bill, primarily within the Florida Insurance Code, where the term would now be defined as the Department of Financial Services. Each of those statutes were reviewed during the preparation of this bill, reflecting a decision that such statutes do not need to be amended because the power granted to the *department* is within the jurisdiction of the DFS. This analysis does not identify those specific sections, but the powers and duties in those sections are all consistent with, and directly related to, the powers and duties of DFS as described in this analysis.

The term *office*, defined as either the Office of Insurance Regulation (OIR), or the Office of Financial Regulation (OFR), is used for all matters within the jurisdiction of each office, to conform to the provision that the director of each office is agency head for all final agency action, other than rulemaking. The two definitions of *office* in the bill with the broadest application are:

- s. 624.05, F.S., which defines *office* as the Office of Insurance Regulation, for purposes of the Florida Insurance Code, consisting of chapters 624 through 632, and 634 through 651, F.S. (s. 624.01, F.S., specifies the Insurance Code).
- s. 655.005, F.S., which defines *office* as the Office of Financial Regulation, for purposes of the financial institution codes, consisting of chapters 655 through 667, F.S. (s. 655.005(1)(j), F.S., specifies the financial codes)

The bill uses the term *commission*, meaning Financial Services Commission, in those provisions that expressly or clearly provide **rulemaking authority** to matters within the jurisdiction of either office (OIR or OFR), to conform to the provision of the 2002 act that the commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

A particular statute may not expressly require rulemaking, but may authorize agency action for which a rule is effectively required under ch. 120, F.S. In such cases, the bill generally uses the

term *office* rather than *commission*, but the use of the term is not intended to impact the requirements of ch. 120, F.S., as to when a rule is required, or the requirement of s. 20.121, F.S., that the commission acts as agency head for all rulemaking for each office. Some sections indicate that agency action could apply uniquely to an individual or have general application to a class of persons, for which the bill uses the phrase, *commission or office*. For example, numerous statutes currently require applicants for licensure for various types of insurance and financial licenses to submit “such additional information as the department [DOI or DBF] requires.” Recognizing that certain information may be required of all applicants for which a rule would be required, but that certain information may be required of an individual applicant, the bill generally refers to additional information as the *office or commission* requires, unless the context indicates otherwise.

The bill designates the CFO as the State Fire Marshal in s. 633.01, F.S. Therefore, all current statutory references to the *State Fire Marshal* (or *Division of State Fire Marshal*) do not need to be amended, since the CFO will assume those duties.

Statutes Implementing Constitutional Duties of the Chief Financial Officer

Chapter 17, F.S.; Chief Financial Officer. - The bill merges ch. 17, F.S. (Comptroller) and ch. 18, F.S. (Treasurer) into a revised ch. 17 (Chief Financial Officer), which contains the statutory duties that most directly relate to the constitutional duties of the CFO. All powers currently provided to the Treasurer or Comptroller are deleted and assigned to the CFO. Current chapter 17 serves as the base law being amended. The powers and duties in ch. 18 are either amended into current sections in ch. 17 with the comparable section in ch. 18 repealed, or the sections of ch. 18 are transferred to new sections in ch. 17.

The affected sections are amended to conform to the fact that one officer, rather than two, approves the expenditure of funds and issues payment. But in certain sections, as described, the bill attempts to maintain intra-agency accountability in this regard, by requiring certain functions to be performed by the Division of Accounting and Auditing (formerly in DBF), and the Division of Treasury (formerly in DOI). The bill does not add or delete powers or duties, except for the deletion of certain archaic or outdated requirements, cited below.

The bill changes all references from *Treasurer*, *Comptroller*, and *Department of Banking and Finance* (and *department*) to the *Chief Financial Officer* or *department* (defined as DFS in s.17.002, F.S.). Some provisions of ch. 17, F.S., currently refer to powers and duties of the *Department of Banking and Finance*, while others refer to the *Comptroller*. Since the Comptroller was the agency head for that department, the terms were basically inter-changeable, as are the current terms *Chief Financial Officer* and *department* (DFS) for the same reason. The bill uses both terms, but more consistently uses *Chief Financial Officer*, because the duties are directly related to the constitutional duties of the office itself.

The bill also makes the following changes in ch. 17 and 18, F.S.:

Newly created s. 17.001, F.S., restates the provisions of the State Constitution that the Chief Financial Officer is the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities. Newly created s.

17.002 defines the term *department* for the purposes of the chapter as the Department of Financial Services.

Section 17.03, F.S., is amended to delete reference to the current procedure for the Comptroller to issue a warrant to the Treasurer directing the Treasurer to pay a specified amount out of the State Treasury. As amended, the CFO would issue a warrant directing the payment out of the State Treasury of such amount as he or she allows. But, for accounting purposes, the bill amends s. 17.56 (currently s. 18.08, F.S.), to require the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the CFO and paid by the Division of Treasury.

Section 17.04, F.S., is amended to change *Division of Financial Investigations* (in former DBF) to *Division of Accounting and Auditing* (in DFS), which has the duty to conduct investigations within or outside the state as it deems necessary to aid the CFO in enforcing duties relative to auditing state accounts, to refer any records tending to show any criminal violations to state or federal law enforcement or prosecutorial agencies, and to provide investigative assistance to those agencies. This is consistent with the 2002 act, in s. 20.121(2)(a)2., F.S., which assigns such duties to the *Office of Fiscal Integrity* (which operates as a criminal justice agency) within the Division of Accounting and Auditing of DFS. Conforming changes are made to s. 17.0401, F.S., which currently provides for confidentiality of information relating to financial investigations. This section is amended to apply to an investigation conducted by the Division of Accounting and Auditing, rather than the Division of Financial Investigations.

Section 17.10, F.S., currently requires the Comptroller to maintain a record of all warrants issued, which the bill applies to the CFO and adds the requirement that the CFO account for all state funds and securities. The latter requirement currently applies to the Treasurer in s. 18.08, which also requires the Treasurer to keep a record of warrants which the Treasurer pays. The bill also applies these requirements specifically to the Division of Treasury in s. 17.555, F.S.

Section 17.54, F.S., changes Treasurer to CFO regarding the required annual report to the Governor, and adds a requirement that a copy of the report be provided to the Senate and House of Representatives. This is currently required for the annual report of the Comptroller in s. 18.09, which is repealed by the bill.

The bill deletes a reference in s. 17.61, F.S. (currently s. 18.125, F.S.) to a requirement for approval of the State Board of Administration (SBA) for investments made by the Treasurer (changed to CFO). According to the Division of Treasury, the requirement for SBA approval is an outdated reference because such approval has not been required since a 1996 act deleted this requirement in s. 18.10, F.S., but failed to make the conforming change to s. 18.125, F.S.¹⁴

The bill amends s.17.62, F.S., (currently s. 18.15, F.S.) regarding payment of interest to the Treasurer (changed to CFO) on state funds deposited in qualified public depositories, to delete authorization for semiannual payments, rather than quarterly payments, to conform to long-standing practice of the Treasurer requiring semiannual payments.

¹⁴ ch. 96-177, L.O.F.

Sections 17.51 and 17.64 (currently ss. 18.01 and 18.20, F.S.), are amended to delete certain obsolete procedures dealing with vouchers and reproduction of records. Also, see *Repealed Statutes*, below, for s. 17.06, F.S., related to disallowed items and accounts.

State Fiscal Duties of CFO in other Florida Statutes; Trust Funds - The bill changes *Treasurer* and *Comptroller* to *Chief Financial Officer*, and changes *Department of Banking and Finance* to *Department of Financial Services*, for all duties related to state fiscal matters (as compared to insurance or banking regulatory matters). This affects numerous sections that affect virtually all state and local agencies, but is simply a name change to conform to the constitutional provision that designates the CFO as the state fiscal officer. A primary example is ch. 215, F.S., (Financial Matters: General Provisions), which addresses paying money into the State Treasury, delinquent accounts to the state, and other general financial matters, all amended to apply to the CFO and DFS. This chapter also refers to trust funds that were transferred by the 2002 act, which are amended to conform to the act.

Similarly, ch. 280, F.S., which specifies the duties of the Treasurer to approve financial institutions as public depositories eligible to hold public funds, is amended to apply to the CFO. Other examples of state fiscal powers are ss. 68.083-68.092, F.S., relating to the Florida False Claims Act, amended to change Department of Banking and Finance to DFS (and Comptroller to CFO), regarding the authority to bring a civil action arising from investigations of persons who cause state government to pay false claims. Also, ss. 112.3144 and 112.3145, F.S., are amended to change DBF to DFS regarding unpaid fines that must be submitted to the department that constitute a claim or debt owed to the state. Many other sections relating to state fiscal powers of the Comptroller and Treasurer are similarly changed, which are not individually identified in this analysis.

Statutory Duties Assigned to the Department of Financial Services (headed by the CFO)

The major statutory duties and responsibilities that the bill assigns to the Department of Financial Services (headed by the CFO), are listed below (not including other powers and duties that are separately addressed in, *How the Bill Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*):

- Accounting and auditing of state finds, keeping and investing state funds and securities, disbursing payment of state funds, and all other state fiscal powers of the former Treasurer and Comptroller (chs. 17, 215, 216, 287, et al. F.S.)
- Approval of financial institutions as public depositories (ch. 280, F.S.)
- Administration of the deferred compensation program for state employees (s. 112.215, F.S.)
- Administration of the unclaimed property program (ch. 717, F.S.)
- Duties of the State Fire Marshal to regulate installation of fire equipment, conduct safety inspections, investigate causes of fires, provide firefighter training and certification, adopt safety rules for firefighter employers and fire codes for specified buildings (ch. 633, F.S.); license and permit the manufacture and use of explosives (ch. 552, F.S.); regulate the sale of fireworks (ch. 791, F.S.)

- Administration of the state's risk management program for property, auto, liability, and workers' compensation (ch. 284, F.S.; ss. 265.53-265.55, 393.002, 393.075, 409.175, and 766.28, F.S.)
- Investigation and arrest of insurance fraud crimes (ss. 626.989 and 626.9892, F.S.)
- Acting as court-appointed receiver, liquidator, or rehabilitator of an insurer, HMO, or other entity regulated by OIR to which the provisions of ch. 631 apply; approval of plans of operation and oversight of insurance guaranty associations (relevant sections of ch. 631, F.S., et al.)
- Licensure and regulation of insurance agents and agencies, customer representatives, service representatives, reinsurance intermediaries, and bail bond agents (applicable provisions of chs. 626 and 648, F.S.);
- Licensure and regulation of cemeteries and pre-need funeral and burial contracts (ch. 497, F.S.)
- Administration of the workers' compensation act, including enforcement of employer compliance, monitoring carrier compliance, and assisting employees with obtaining compensation (ch. 440, F.S.)
- Authority of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing (s. 627.0613, F.S.)
- Authority to receive inquiries and complaints related to insurance or financial institutions from consumers, provide assistance for consumers, and prepare and disseminate information about regulated products and services.

Statutory Duties Assigned to the Office of Financial Regulation (OFR)

The bill assigns to OFR (and to the commission, for rulemaking) all of the statutory duties previously delegated to the Dept. of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all specifically assigned to the Department of Financial Services. Listed below are the subject areas and statutory jurisdiction that are assigned to OFR, to the extent that such jurisdiction was previously delegated to DBF:

- Mortgage Brokers, Lenders and Mortgage Companies, including enforcement of the Florida Fair Lending Act (ch. 494, F.S.)
- Consumer Finance Companies (ch. 516, F.S.)
- Securities Registration and Securities Dealers, Investment Advisers, and Associated Persons (ch. 517, F.S.)¹⁵
- Retail Installment Sales Providers, including motor vehicle installment sellers, retail installment sellers, sales finance companies and home improvement finance sellers (ch. 520, F.S.)

¹⁵ The Committee of Transition Management, as discussed in *Present Situation*, determined that for reasons of efficiency certain administrative functions related to licensure of securities dealers should be performed by the Division of Agent and Agency Licensing in DFS. The bill's amendments to ch. 517, F.S., do not reflect any such powers or duties for DFS. It is not clear if such powers or duties as may be contemplated would be authorized by s. 20.121(3)(b), F.S., which provides legislative intent to provide the commission with the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability.

- Title Loans (ch. 537, F.S.)
- Collection Agencies (ch. 559, parts V and VI, F.S.)
- Money Transmitters, including check cashers, foreign currency exchanges, and deferred presentment providers (ch. 560, F.S.)
- Financial Institutions (ch. 655, F.S.)
- Credit Unions (ch. 657, F.S.)
- Bank and Trust Companies (ch. 658, F.S.; see, s.120.80, F.S.)
- Trust Business (ch. 660, F.S.)
- International Banking (ch. 663, F.S.)
- Associations (ch. 665, F.S.)
- Savings Banks (ch. 667, F.S.)
- Interest and Usury; Lending Practices (ch. 687, F.S.)
- Certified Capital Companies (s. 288.99, F.S.)¹⁶
- Powers in a state of emergency to modify or suspend the financial institutions codes in order to expedite the recovery of communities (s. 252.62, F.S.)
- Examination or review of the:
 - Florida Export Finance Corporation (s. 288.778, F.S.)
 - Industrial Development Corporation (ss. 289.081-289.121, F.S.)
 - Florida Commercial Space Financing Corporation (s. 331.419, F.S.)
 - Housing Development Corporation of Florida (s. 420.141, F.S.)
- Issuance of permits to sell securities of an association doing business under a common law declaration of trust (s. 609.05, F.S.)
- Establishment of one or more Florida equity exchanges (s. 519.101, F.S.)

Statutory Duties Assigned to the Office of Insurance Regulation (OIR)

The bill assigns the statutory powers and duties listed below to the Office of Insurance Regulation (and to the commission, for rulemaking), which the current statutes assign to the Dept. of Insurance. (However, the list below does not include other powers and duties separately discussed in, *How the Bill Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps*, which follows this section of the analysis.)

- Issuance of certificates of authority or licenses to, and regulation of:
 - Authorized insurers (ss. 624.401-430, F.S.), including domestic insurers, assessable mutual insurers, and captive insurers, and duties related to insurance holding companies (ch. 628, F.S.), and reciprocal insurers (ch. 629, F.S.)
 - Multiple-employer welfare arrangements (ss. 624.436-624.446, F.S.)
 - Commercial self-insurance funds, including workers' compensation group self-insurance funds (ss. 624.460-624.488, F.S.)
 - Viatical settlement providers and contracts (ss. 626.991-626.99295, F.S.)

¹⁶ The bill provides the same authority to OFR and the commission as previously provided to DBF relative to certified capital companies, but changes the definition of *office* in s. 288.99(3), F.S., from *Office of Tourism, Trade, and Economic Development* (OTTED), to *Office of Financial Regulation*. This requires conforming changes throughout s. 288.99, F.S., to maintain the current jurisdiction of OTTED. The bill also does not change certain references to the former DBF, relative to department actions required by dates that have passed. Finally, the bill amends s. 288.99(10)(b), F.S., to refer to audit authority for both the CFO and OFR, where the current law refers to audit authority of the Comptroller.

- Purchasing groups and risk retention groups (ss. 627.941-627.955, F.S.)
- Fraternal benefit societies (ch. 632, F.S.)
- Warranty associations (motor vehicle, home, and service) (ch. 634, F.S.)
- Prepaid limited health service organizations (ch. 636, F.S.)
- Health maintenance organizations (ch. 641, part I, F.S.)
- Prepaid health clinics (ch. 641, part II, F.S.)
- Legal expense corporations (ch. 642, F.S.)
- Continuing care facilities (ch. 651, F.S.; related provisions in ch. 400, F.S.)
- Financial and market conduct examinations of insurers (ss. 624.316, 624.3161, 627.4238, F.S.)
- Administrative supervision of insurers (ss. 624.80-624.915, F.S.)
- Powers regarding accounting, investments, and deposits of insurers (ch. 625, F.S.)
- Licensure and regulation of insurance adjusters (ch. 626, part VI, F.S., and related general powers in ch. 626, F.S.)
- Approval of eligible surplus lines insurers (ss. 626.913-.9201, F.S.)
- Regulation of rates for property and casualty insurance, approval of rating organizations, and ordering returns of excess profits (ch. 627, part I, F.S.)
- Approval of plans of operation and regulation of joint underwriting associations (not including appointment of board members), including Citizens Property Insurance Corporation, the Florida Patient's Compensation Fund, the Florida Birth-Related Neurological Injury Compensation Association, and other JUAs, and adoption of a market assistance plan (ss. 627.311, 627.351, 627.3515, 766.105, and 766.314, F.S.)
- Approval of insurance policy forms and health insurance rates (ss. 627.410-627.4234, F.S.)
- Regulation of donor annuity agreements (s. 627.481, F.S.)
- Licensure and regulation of premium finance companies and agreements (ch. 627, part XV, F.S.)
- Receiving reports of claims information from insurers (ch. 627, part XVII, F.S.)
- Approval of local government self-insurance plans for health coverage (s. 110.08, F.S.) and other duties of former DOI related to approval of governmental self-insurance plans of self-insurance (ss. 154.209, 163.01, F.S.)
- Duties of the former Dept. of Insurance relative to:
 - approval of self-insurance plans to satisfy motor vehicle financial responsibility requirements (ss. 324.032, 324.171, F.S.);
 - providing assistance to the Dept. of Environmental Protection to implement the Florida Petroleum Liability and Restoration Insurance Program (s. 376.3072, F.S.) and to implement financial responsibility requirements for hazardous waste facilities (s. 403.724, F.S.);
 - the required purchase of insurance by dry-cleaning facilities (ss. 376.3078, 376.3079, F.S.);
 - approval of self-insurance plans for life support services licensed by the Dept. of Health (s. 401.25, F.S.);
 - approval of health flex plans in conjunction with the Agency for Health Care Administration (s. 408.909, F.S.);

- certification of health insurance coverage to qualify for premium assistance for an eligible child under the Florida KidCare Act and related duties (ss. 409.817-409.912, F.S.)

How the Bill Addresses Areas Where Jurisdiction of DFS and OIR is Unclear or Overlaps

Insurer insolvencies and delinquency proceedings under ch. 631, F.S.; insurance guaranty funds; insolvencies of other risk-bearing entities - The bill amends part I of ch. 631, F.S. (ss. 631.001-631.399, F.S.), to distinguish between the jurisdiction of OIR and DFS, relative to the current DOI powers over insurer insolvencies and delinquency proceedings. The key provision is s. 631.031, F.S. (Initiation and commencement of delinquency proceeding), as amended, which provides as follows:

Upon a determination by the office that one or more grounds for the initiation of delinquency proceedings exist pursuant to this chapter and that delinquency proceedings must be initiated, the Director of the Office of Insurance Regulation shall notify the department of such determination and shall provide the department with all necessary documentation and evidence. The department shall then initiate such delinquency proceedings. (s. 631.031(1), F.S., as amended by CS/SB 1712)

Thus, the Director of OIR would determine that delinquency proceedings must be initiated and would direct attorneys working for DFS (in the Division of Rehabilitation and Liquidation) to petition the circuit court for such delinquency proceedings. Pursuant, to s. 631.031(2), F.S., the department would then commence any such proceeding by applying to the court for an order directing the insurer to show cause why the department should not be granted the relief prayed for, such as an order to appoint the department as receiver and to liquidate the business of a domestic insurer. If the order is issued, and after a full hearing, the court either denies or grants the application, and such other relief as the nature of the case requires. Or, the department may petition for the entry of a consent order of conservation, rehabilitation, or liquidation. In any case, it would be the department (DFS) that would be appointed as the receiver, liquidator, rehabilitator, or conservator of an insurer, and DFS would have such authority previously granted to DOI for receivership matters from that point.

To conform to this change in s. 631.031, F.S, the bill changes *department* (meaning DOI), to *office* (OIR), as the agency which makes the determination that grounds for rehabilitation exist for a domestic insurer (s. 631.051, F.S.) and that the grounds for conservation exist for an alien insurer (s. 631.081, F.S.). In comparison, many other sections are not amended which refer to the *department* (now meaning DFS) applying for a court order based upon the existence of certain grounds, including s. 631.061 (Grounds for liquidation), s. 631.071 (Grounds for conservation; foreign insurers), s. 631.091 (Grounds for ancillary liquidation; foreign insurers), and s. 631.152 (Conduct of delinquency proceeding; foreign insurers). The bill does not amend these sections to provide that OIR must make the determination that such grounds exist, but the amendment to s. 631.031, summarized above, makes it clear that OIR must first make this determination and require DFS to initiate delinquency proceedings.

All references to *department* (meaning DOI) are maintained (now meaning DFS) as the agency which seeks, petitions, or obtains a court order authorized in part I of ch. 631, F.S. This is

reflected in ss. 631.031 and 631.152, as amended by the bill, and also applies to the following sections which are *not* amended: ss. 631.021, 631.042, 631.152(1), 631.361, and 631.371, F.S.

Similarly, all current references to *department* are maintained (meaning DFS), as the receiver, liquidator, rehabilitator, or conservator of an insurer, its assets, or its estate. This is reflected in s. 631.152, F.S., as amended by the bill, and in many sections in part I of the chapter that are *not* amended: ss. 631.011(17), 631.0515, 631.061, 631.071, 631.101, 631.131, 631.141, 631.156, 631.157, 631.311, 631.321, 631.331, 631.3915, 631.395, and 631.397, F.S.

Other affected sections in part I of chapter 631, F.S., deal with related issues, as follows:

- s. 631.041(1), F.S., not amended by the bill, which would require the court to notify the *department* (DFS) prior to granting relief to any person from the automatic stay that is entered when a petition is filed;
- s. 631.041(2)-(4), F.S., not amended by the bill, which would authorize the *department* (DFS) to apply to a court for an order to show cause or to petition for an injunction restraining the insurer and its officers, directors, and other persons from the transaction of its business or the disposition of its property until further order of the court. Similarly, no bond would be required of the *department* as a prerequisite for the issuance of any injunction or restraining order;
- s. 631.111, F.S., not amended by the bill, which would authorize the *department* (DFS) to apply for an order dissolving the corporate existence of a domestic insurer upon the application for an order of liquidation of such insurer or at any time after such order has been granted;
- s. 631.152, F.S., amended by the bill to provide that the *department* (DFS) must file a petition requesting appointment as ancillary receiver for an insurer not domiciled in Florida on the grounds set forth in s. 631.091, F.S. (which s. 631.031, F.S., would require the *office* to determine), if the *department* (“*it*”) finds that there are sufficient assets of the insurer located in Florida to justify the appointment of an ancillary receiver, *or* if 10 or more Florida residents having claims against the insurer file a petition with the *department or office* requesting the appointment of such ancillary receiver;
- s. 631.154, F.S., not amended by the bill, which would provide that all costs and expenses of the *department* (DFS) incurred in the recovery of property, assets, or funds in the possession of third persons, including reasonable attorney’s fees and staff salaries, are entitled to be recovered by the receiver (department) if it is successful in establishing its claim;
- s. 631.231, F.S., amended by the bill to provide that neither the *department or office* shall be required to pay any fee to any public officer of Florida for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the department or office of any of the powers or duties conferred upon it under ch. 631, F.S.;
- s. 631.361, F.S., not amended by the bill, which would provide that upon filing by the *department* (DFS), the court may issue an order directing the *department* to take possession and control of the property and records of an insurer and its premises, and to enjoin the insurer and its officers and employees from removing any property; that the court’s order shall be for such duration as the court deems necessary to enable the

- department* to ascertain the insurer's condition; and that the court shall vacate the seizure order if the *department* fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so.
- s. 631.391, F.S., as amended by the bill, to require any officer, director, employee, etc., of any insurer or affiliate to fully cooperate with the *department and office* in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding; similarly, the bill amends s. 631.025, F.S., to provide that the court in a delinquency proceeding may exercise jurisdiction over any person required to cooperate with the *department and office*;
 - s. 631.392, F.S., amended by the bill to provide immunity from liability for the *Chief Financial Officer, the department, the office, or any of their employees or agents* for any action taken by them in the performance of their powers and duties under this chapter.
 - s. 631.398(1), F.S., amended by the bill to provide that any member insurer, agent, employee, etc, may make reports and recommendations to the *department or office* upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do insurance business in this state. Such reports and recommendations are confidential and exempt from the Public Records Law (which is a current exemption, not expanded);
 - s. 631.398(2), F.S., amended by the bill to provide that the *office* shall report to the board of directors of the appropriate insurance guaranty association when it has reasonable cause to believe that a member insurer may be impaired or insolvent and to seek the advice of the board relative to the responsibilities of the office in relation to the financial condition of companies seeking admission to transact insurance in Florida;
 - s. 631.398(3), F.S., not amended by the bill, which would provide that the *department* shall prepare a summary report relating to the history and causes of a domestic insurer insolvency, no later than the conclusion of any insolvency proceeding.

The bill also assigns to the *department* (DFS), as related to its duties of rehabilitation and liquidation, the statutory authority to approve plans of operation and to have oversight responsibilities for each of the four insurance guaranty associations established in parts II, III, IV, and V of ch. 631, F.S., respectively, which pay claims of insolvent insurers and HMOs. The four guaranty associations are as follows:

- Florida Insurance Guaranty Association (Part II of ch. 631; ss. 631.50-631.70, F.S.);
- Florida Life and Health Insurance Guaranty Association (Part III of ch. 631; ss. 631.711-631.737, F.S.);
- Health Maintenance Organization Consumer Assistance Plan (Part IV of ch. 631; ss. 631.811-631.828, F.S.); and
- Florida Worker's Compensation Insurance Guaranty Association (Part V of ch. 631; ss. 631.901-631.932, F.S.)

Again, many of the affected sections in parts II-V of ch. 631, F.S., are not amended, because the term *department* would mean DFS.

The bill authorizes the CFO to make appointments to the governing boards of these guaranty funds, which were formerly made by the Insurance Commissioner, as further discussed in *Membership and Appointments to Boards and Commissions*, below.

The primary powers and duties relative to the insurance guaranty associations are assigned to the *department* (DFS), but related regulatory powers over insurers, HMOs, and workers' compensation self-insurance funds, are assigned to the *office* (OIR), as explained below.

With regard to the Florida Insurance Guaranty Association (FIGA), the bill amends s. 631.57(3), F.S., to provide that the *office*, upon certification of the board of FIGA, shall levy assessments against insurers for the payment of covered claims. Other duties are distinguished in s. 631.59, F.S., to provide that the *department* shall notify FIGA of the existence of an insolvent insurer not later than 3 days after it receives notice of the determination of the insolvency (impliedly, from the office), and that the *department* may require FIGA to notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights. But, the *office*, would be required to provide FIGA, upon request, with a statement of the net direct written premium of each member insurer. Also, the *office* may suspend or revoke the certificate of authority of, or fine, any insurer which fails to pay any assessment, and the *office* may revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily. Similarly, the board of FIGA must notify the *office* of any information indicating that an insurer may be insolvent or in a hazardous financial condition, and to "request" (which triggers a requirement) that the *office* conduct an examination of the insurer (s. 631.62, F.S.).

As a technical change, the bill deletes references in s. 631.57, F.S., to bonds issued by FIGA (in 1992-93, through the city of Homestead) and special assessments for such bonds, for the purpose of paying claims of insurers rendered insolvent due to Hurricane Andrew claims. All such bonds have been retired and the special assessments are no longer being made. The bill deletes related provisions in s. 163.111, F.S., that authorized affected municipalities to issue such bonds (limited to Hurricane Andrew-related insolvencies).

For the Florida Life and Health Insurance Guaranty Association (FLAHIGA), similar to FIGA, the bill authorizes the *department* to approve the plan of operation and to have oversight responsibilities, while the *office* has regulatory responsibilities over member insurers. (See, ss. 631.72, 631.722, 631.723, as amended by the bill, and the following sections which are not amended: 631.715, 631.716, 631.717, 631.721, and 631.725, F.S.) The current law, in s. 631.718, F.S., provides for the board of FLAHIGA to assess the member insurers, which the bill maintains.

Similar changes are made for the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP). (See, ss. 631.814(8) and 631.821, as amended by the bill, and the following sections which are not amended: 631.815, 631.816, 631.818, 631.820, and 631.823, F.S.).

Similar changes are also made for the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). (See, ss. 631.912, and 631.917, F.S., as amended by the bill, and the following sections which are not amended: 631.913, 631.916, and 631.921, F.S.) In contrast to what the bill provides for FIGA, the bill would require the *department* (DFS), rather than the *office* to levy assessments on insurers upon certification by the board of FWCIGA (by not amending s. 631.914, F.S.). This section further states that assessment shall be remitted to and

administered by the board in the manner specified by the plan of operation. (Compare s. 631.718, F.S., which provides for the board of FLAHIGA to assess its member insurers.)

The current law also provides that DOI has the same powers of rehabilitation and liquidation over many other “risk bearing” entities subject to licensure, as it has over insurers in ch. 631, F.S. But, these provisions are often only one sentence, which states the following, or similar language: “*Any rehabilitation, liquidation, conservation, or dissolution of a [particular licensed entity] shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, or dissolution of insurers.*” The quoted language is provided in s. 624.446, F.S., relative to multiple-employer welfare arrangements. Since DFS (not OIR), is provided the powers of rehabilitation, liquidation, conservation, and dissolution in chapter 631, F.S., the bill maintains the term *department* in the quoted language, now defined as DFS. This issue is addressed in the following sections (which may or may not be amended): ss. 624.477 (commercial self-insurance funds); 627.357(7)(i) (medical malpractice self-insurance funds), 627.975(1) (insurers writing financial guaranty insurance), 628.917 (captive insurers), 634.430 (service warranty associations), 636.056 (prepaid limited health service organizations), 651.119 (continuing care facilities), F.S., and other sections. However, the bill has inconsistent provisions related to HMOs, by providing in s. 641.284, F.S., that a delinquency proceeding under chapter 631 or supervision by the *office* constitutes the sole and exclusive means of liquidating, reorganizing, rehabilitating, or conserving an HMOs, but providing in s. 641.215, F.S., that an HMO must file an acknowledgment that a delinquency proceeding pursuant to part I of chapter 631, or supervision by the *department* pursuant to ss. 624.80-624.87, F.S., constitutes the sole and exclusive method for the liquidation, rehabilitation, reorganization, or conservation of a HMO.

There are also sections outside of ch. 631 that refer to DOI’s powers of rehabilitation and liquidation of insurers, which the bill amends (or not) consistent with ch. 631.

Service of process - The bill provides that the CFO is the agent for service of process in all instances where the current law provides that the Insurance Commissioner is the agent for service of process. A distinction could have made to make the director of OIR and the CFO each agents for service of process for persons related to each one’s jurisdiction, but the bill provides for one office to be agent for service of process, as it existed under DOI, given its ministerial nature and for reasons of efficiency and minimizing confusion to the public.

For this purpose, the bill amends s. 48.451, F.S., to provide that the CFO, rather than the Insurance Commissioner, would be the agent for service of process on insurers applying for a certificate of authority, licensed nonresident insurance agents, unauthorized insurers (in order to subject certain insurers and persons to the jurisdiction of courts in this state in suits by insureds), domestic reciprocal insurers, fraternal benefit societies, and persons required to file statements pursuant to s. 628.461 (who acquire 5 percent or more of the controlling stock of a domestic insurer or controlling company). The bill also revises the names of entities that use the CFO as agent for service of process, to reflect the current types of insurance licenses that are issued, by changing *automobile inspection and warranty associations* to, *warranty associations under chapter 634*; and changing *ambulance service associations* to, *prepaid limited health service organizations under chapter 636*. Other sections in the Insurance Code provide that the

Insurance Commissioner is agent for service of process, which are all changed to designated the CFO as agent for service of process.

However, where the current law provides for the Comptroller (as head of the Dept. of Banking and Finance) to be the agent for service of process, the bill provides that the director of the Office of Financial Regulation (OFR), rather than the CFO, would be the agent for service of process. This applies to various persons in the securities industry; specifically, any issuer as defined in s. 517.021, F.S., or any dealer, investment adviser, or associated person registered with OFR (formerly registered with DBF) for any violation of ch. 517, F.S. (ss. 48.151, F.S., 517.101, F.S.).

General powers - The bill delegates certain general powers of the former Dept. of Insurance to both DFS and OIR, most of which are in part I of ch. 624, such as the authority to have an official seal (s. 624.303, F.S.), to publish and disseminate information (s. 624.307(4), F.S.), and duties with respect to maintenance and destruction of records (s. 624.312, F.S.). The bill also authorizes both DFS and OIR to employ actuaries as at-will employees, based on the possible need for DFS to hire an actuary for the Office of the Insurance Consumer Advocate or the Division of Risk Management (s. 624.307(6), F.S.). Neither hires an actuary at this time, but the Office of Insurance Consumer Advocate formerly employed an actuary.

Other general powers are similarly delegated to both DFS and OIR, but due to their regulatory nature, the bill more clearly expresses that such powers are limited to the regulatory jurisdiction of the department or the office, respectively, as the bill does in s. 624.307, F.S., regarding the general power to enforce the provisions of the Insurance Code and to conduct investigations. Another significant general power is s. 624.310, F.S., which currently authorizes DOI to issue cease and desist orders against licensees, to order the removal of affiliated parties of a licensee, and to impose administrative fines against any person who violates the Insurance Code. The bill, in subsection (2), authorizes both DFS and OIR to exercise these powers, but only with regard to the licensees that they each regulate, affiliated parties of such licensees, and unlicensed persons within the regulatory jurisdiction of either OIR or DFS, respectively. Subsection (2) operates to limit the authority provided to *the department or office* in other provisions of this section. The reference to *unlicensed persons* is added due to the authority in the current section for administrative fines against *any person* found to have violated any provision of the Insurance Code, such as a person selling insurance without being properly licensed.

Administrators and service companies - The bill provides for the *office* (OIR) to regulate administrators and service companies (ss. 626.88-626.899, F.S.), as consistent with the jurisdiction of the office to regulate adjusters and with the transfer to OIR of the Division of Insurer Services formerly under the Dept. of Insurance, which exercised these functions. An administrator is a person who solicits or effects coverage, collects premiums, or adjusts or settles claims, in connection with insured or self-insured programs which provide life or health coverage. A service company performs these same functions but does not control funds.¹⁷

Viatical settlement brokers - The bill provides for the *department* (DFS) to license and regulate viatical settlement *brokers*, consistent with the jurisdiction of the department to regulate

¹⁷ Section 626.88(1), F.S., defines *administrator*, and s. 626.895, F.S., defines *service company*.

insurance agents, (rather than being within the jurisdiction of OIR to regulate *viatical settlements* and to regulate viatical settlement providers as risk-bearing entities).

Chapter 626, F.S.: General powers and duties related to agents, adjusters, and other licensees; Unauthorized insurers; Unfair insurance trade practices; Insurance Fraud - The bill creates s. 626.016, F.S., which distinguishes between the powers and duties of the Chief Financial Officer and the department (DFS), and powers and duties of the commission and office (OIR), that are provided in chapter 626, F.S. This chapter has powers and duties that apply to various categories of insurance licensees, some of which are licensed by DFS (like agents), and some by OIR (like adjusters). The chapter also includes other important powers relative to unauthorized insurers and unfair trade practices, as well as investigation and arrest of crimes of insurance fraud. The new section specifies, in effect, how a statute in the chapter that provides a power to the *department or office* (or to the *department or commission*, for rulemaking) is to be interpreted and limited, as follows:

Subsection (1) provides that the powers and duties of the CFO and department (DFS) specified in ch. 626 apply only with respect to insurance agents, managing general agents, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, agencies, and unlicensed persons subject to the regulatory jurisdiction of the department.

Subsection (2) provides that the powers and duties of the commission and office (OIR) apply only with respect to insurance adjusters, service companies, administrators, viatical settlement providers and contracts, and unlicensed persons subject to the regulatory jurisdiction of the commission and office.

Subsections (1) and (2) are understood as intending to reference all of the licenses issued pursuant to ch. 626, F.S., in order to interpret, and properly limit, those statutory provisions in part I of the chapter that apply to multiple licensure categories for which the bill authorizes the *department or office* to take certain actions.

Subsection (3) is understood as intending to address the powers to sanction the authorized sale of insurance provided in part VIII of the chapter, and the prohibited practices in part IX commonly known as unfair insurance trade practices, most of which are listed in s. 626.9541, F.S., and which apply to insurers, agents, and other licensees of the department or office, and some of which apply to persons who are not licensed. For example, an unlicensed person may be illegally selling insurance as well as engaging in unlawful trade practices. Subsection (3) provides that the department (DFS) has jurisdiction to enforce the provisions of this chapter with respect to persons who engage in actions for which a license issued by the department is legally required, and the office (OIR) has jurisdiction to enforce the provisions of this chapter with respect to persons who engage in actions for which a license issued by the office is legally required. For persons who violate a provision of this chapter for whom a license issued by either the department or office is not required, either the department or office may take administrative action pursuant to agreement between the office and the department.

(See *Technical Deficiencies*, below regarding the apparent conflict between subsections (1) and (2) and subsection (3).)

Subsection (4) specifies that nothing in the section is intended to limit the authority of the department and its Division of Insurance Fraud, as specified in s. 626.989, F.S., which provides criminal investigation and arrest powers that apply to all persons.

The bill amends s. 626.909, F.S., related to the current power of DOI to take actions against unauthorized insurers and persons representing or aiding such insurers. As amended, both the *office* (OIR) and the *department* (DFS) have the right to bring such actions, since this relates to both the jurisdiction of OIR over insurers and the jurisdiction of DFS over agents.

The powers and duties provided in s. 626.989, related to the Division of Insurance Fraud and powers to conduct investigations and make arrests for crimes of insurance fraud, are limited to the *department* (DFS), and would not apply to OIR. Other provisions of the Insurance Code, primarily in chapter 624 and in parts VIII and IX of chapter 626, F.S., provide investigatory and enforcement powers to OIR relative to enforcing provisions of the Insurance Code.

Division of Consumer Services; other references to consumer complaints - The bill amends s. 20.121 to specify the functions of the Division of Consumer Services, formerly called the Division of Insurance Consumer Services, which the 2002 act renamed and transferred from DOI to DFS. (This division is distinct from the Office of the Insurance Consumer Advocate, also assigned to DFS and appointed by the CFO, who is authorized to represent the general public in any insurance matter or hearing, as specified in s. 627.0613, F.S.)

The bill provides that the Division of Consumer Services shall perform the following functions concerning products or services regulated by DFS or by either office (OIR or OFR) of the commission:

- Receive inquiries and complaints from consumers (and responses from licensees, as explained below);
- Prepare and disseminate such information as the department deems appropriate to inform or assist consumers;
- Provide direct assistance and advocacy for consumer who request such assistance or advocacy; and
- With respect to apparent or potential violations of laws or rules, report such violations to the appropriate division of the department or office of the commission, which may take such further action as it deems appropriate.

The bill authorizes the division to request any person in possession of information relating to a consumer inquiry or complaint to provide the information to the division within 20 days of the date of request, subject to certain exceptions. The bill authorizes the division to impose an administrative penalty for failure to comply of up to \$2,000 per violation upon any entity licensed by the department or by OIR (but not OFR) and \$250 for the first violation, \$500 for the second violation and up to \$1,000 per violation thereafter upon any individual licensed by the department or OIR (but not OFR). Additionally, the division must report this violation to the appropriate division of the department or the appropriate office. The department may adopt rules to implement these provisions.

In other sections that currently refer to complaints received by DBF, the bill generally changes the reference to complaints received by either the department (DFS) or the office (OFR, in recognition of the fact that persons may contact OFR directly with a complaint, particularly if the law provides a public records exemption or requires confidentiality for such complaints. For example, s. 560.129, F.S., is amended to provide that any consumer complaint related to money transmitters received by either OFR or DFS (currently, DBF) is confidential and exempt. But, if the current law is phrased to direct the public as to where complaints should be filed, the bill generally refers to the department (DFS). For example, see ss. 494.00421 (mortgage brokers), 537.008 (title loans), and 560.128, (money transmitters), F.S. But, the bill maintains one specific exception, where the current law requires that consumer complaints related to consumer collection agencies (regulated by OFR) are to be made to the Division of Consumer Services of the Dept. of Agriculture and Consumer Services. (s. 559.725, F.S.)

Civil remedy notices - The bill does not amend s. 624.155(1)-(4), F.S., which has the effect of requiring that the *department* (DFS) would receive notice of a statutory civil remedy action brought by a person against an insurer, where such notice is currently required to be filed with DOI. The department would also receive notice of other civil remedy actions authorized by current law, for which DOI currently receives notice, as provided in s. 634.3284, F.S., (home warranty associations) and s. 634.433, F.S., (service warranty associations). However, the bill has an inconsistency (technical error) in s. 642.0475, F.S., by requiring the civil remedy notice for legal expense corporations to be sent to the *office* (OIR), rather than the department. The civil remedy statute for prepaid limited health service organizations, s. 636.052, F.S., does not require that the notice be sent to any agency, which the bill does not change.

Mediation of property insurance and auto insurance disputes - In s. 627.7015, F.S., the bill authorizes the *department* (DFS) to administer the mediation program for disputed property insurance claims, as consistent with the role of the Division of Consumer Services, as the former Division of Insurance Consumer Services under DOI was responsible for administering this program. As currently authorized for DOI, the bill authorizes DFS to adopt by rule the mediation program and to establish qualifications of mediators, who are deemed to be agents of the department. Subject to such rules, insurers must participate and pay for the mediation, if requested by an insured, but the decision of the mediator is non-binding on the parties; i.e., the insurer cannot be required (by the department or otherwise) to abide by the decision of the mediator.

However, the bill amends s. 627.745, F.S., to provide that OIR is responsible for administering the mediation of motor vehicle insurance claims, which applies to claims for personal injury of \$10,000 or less or any claim for property damage. This program has also been traditionally administered by the Division of Insurance Consumer Services. The mediation is mandatory at the request of either party, costs must be borne equally by both parties, and the mediator's decision is non-binding. This section provides for OIR (presently, DOI) to approve mediators meeting specified qualifications (which has traditionally been administered by the Division of Agent and Agency Services in DOI). These mediators have also been traditionally used by DOI for the property insurance mediation program under s. 627.7015, F.S.

Holocaust victims - The bill does not amend s. 626.9643, F.S., related to Holocaust victims, which has the effect of authorizing the *department* (DFS) to administer this section, which is consistent with the role of the Division of Consumer Services, as it administered this section under the former DOI. As such, the bill would provide that the proof of claim that insurers must allow claimants to use, must meet standards established by the department (DFS). The department would have rulemaking authority for establishing procedures and related forms for facilitating, monitoring, and verifying compliance with this section and for establishing a restitution program for Holocaust victims, survivors, and their heirs and beneficiaries. Insurers would be required to annually report to the department information relating to the results of efforts to locate and pay claims of insured Holocaust victims and their beneficiaries.

Statewide Provider and Subscriber Assistance Program - The bill amends s. 408.7056, F.S., to provide that the *department* (DFS) would assume *all* responsibilities of the former Dept. of Insurance, relative to the Statewide Provider and Subscriber Assistance Program. This is the program established for assisting consumers with unresolved grievances against managed care entities, defined to include HMOs, prepaid health clinics, and health insurers issuing exclusive provider contracts. The bill provides that the *department* (DFS) would not only be represented on the panel that hears consumer complaints and makes recommendations, but also as the entity (in addition to the Agency for Health Care Administration) which may sanction the managed care entity or require it to take certain actions based on the panel's recommendations (due to subsections *not amended* by the bill which use the term *department*.). This would appear to be inconsistent with the jurisdiction of the department as specified in the 2002 act, since the Office of Insurance Regulation is responsible for regulation of insurers and risk-bearing entities, including HMOs. (Exceptions are the bill's provision that authorizes DFS to impose sanctions against workers' compensation carriers for violations of chapter 440, and the authority provided to the Division of Consumer Services in DFS to sanction carriers and other licensees of DFS and OIR who fail to respond to a request for information about a complaint.)

The bill revises the membership of the panel by deleting the reference to "members employed by the agency [AHCA] and members employed by the department [DOI]." Instead, the bill provides that the panel would consist of the Insurance Consumer Advocate or designee thereof, two members employed by AHCA, and two members employed by the department (DFS), chosen by their respective agencies. The remaining members of the panel would be as provided under the current law (including a consumer appointed by the Governor; a physician appointed by the Governor, as a standing member; and physicians who have expertise relevant to the case to be heard, on a rotating basis).

Monitoring and audit of workers' compensation insurers; sanctions - The bill specifies the powers and duties of the department and office relative to carrier regulation under chapter 440, F.S., attempting to distinguish the powers and duties of the *department* (DFS), under its Division of Workers' Compensation, to administer the Workers' Compensation Act, and the powers and duties of the *office* (OIR) to conduct market conduct examinations of insurers and to otherwise regulate insurers.

Section 440.13(11)(b), F.S., currently authorizes the Dept. of Insurance to monitor insurers as provided in s. 624.3161, F.S., (which, in turn, authorizes market conduct examinations of insurers), in order to determine if medical bills are paid in accordance with the law. The bill

amends this provision to provide that the *department* (DFS) shall monitor carriers as provided in ch. 440 and that the *office* (OIR) shall audit insurers and group self-insurance funds as provided in s. 624.3161, F.S. (The definition of *carriers*, not amended, includes insurers, group self-insurance funds, and individual self-insured employers.) The bill provides authority to both DFS and OIR to assess current law fines against any carrier found by DFS or OIR to not be within 90 percent compliance. Both DFS and the commission are provided related rulemaking authority.

The bill amends s. 440.20(8), F.S., to provide that the *office* (OIR) shall monitor the performance of carriers by conducting market conduct examinations, as provided in s. 624.3161, F.S., and conducting examinations as provided in s. 624.317, F.S. Subsection (15) is similarly amended to authorize OIR to examine claims files in accordance with the market conduct examination statute and to impose fines in order to identify questionable claims-handling or a pattern of unreasonably controverted claims. However, the bill provides in subsection (8) that the *department* (DFS) shall establish, by rule, minimum performance standards for carriers to ensure that a minimum 90 percent of all compensation benefits are timely paid. The DFS would also be authorized to fine a carrier pursuant to s. 440.13(11)(b), F.S., (discussed in the above paragraph). The DFS would also be authorized in subsection (10) to require any employer to make a deposit with the CFO to secure the prompt payment of compensation. Both the DFS and OIR would be allowed to initiate investigations of questionable patterns or practices, or repeated unreasonably controverted claims. The commission may, by rule, establish forms and procedures for corrective action plans and for auditing carriers. The commission, in consultation with the DFS, shall adopt rules providing guidelines to carriers to indicate behavior that may be construed as questionable claims handling techniques.

Authorization of employers to self-insure for workers' compensation - The bill authorizes the *department* (DFS) to approve employers to be self-insured for workers' compensation coverage (including public utility self-insurance programs) under s. 440.38, F.S. This is consistent with the transfer of the Division of Workers' Compensation to the department, since this responsibility was formerly exercised by the division when it was under the Dept. of Labor and Employment Security, as well as when it was under the Dept. of Insurance (since July 1, 2002). Similarly, the bill authorizes the department (DFS) to assume the oversight responsibilities of the division with respect to the Florida Self-Insurers Guaranty Association, which guarantees payment of workers' compensation claims for insolvent self-insured employers, which was also the responsibility of the division under DLES and DOI.

Administration of deposits of cash or securities; surety bonds - The bill authorizes the *department* (DFS), to hold deposits of cash or securities (which, in practice, typically means approving arrangements with qualified public depositories to do so), in those statutes which require a licensee of OIR to make a deposit as a condition of licensure. Although not specified, it is understood that these duties would be administered by the Division of Treasury, consistent with the same duties in this regard that the division has historically exercised when under the Dept. of Insurance. But, the bill attempts to distinguish this role from that of the *office* (OIR), which the bill authorizes to determine whether the statutory requirements for a deposit are met, such as specifying conditions for returning the deposit and determining whether such conditions have been met, if a statute specified such powers. These changes, and other related duties, reflect the same division of duties that, in practice, were formerly exercised by the Division of Treasury and the Division of Insurer Services, respectively, when both were under Dept. of Insurance,

even though the law simply refers to the *department* exercising all such authority. For persons, like title insurance agents, who are regulated by the DFS, rather than OIR, and who are required to deposit cash or securities, the bill maintains the current law reference to *department*, because the DFS will be responsible for all aspects of the deposit (even though different divisions will have different responsibilities as they did under DOI).

Statutory deposit requirements are addressed in many sections, which the bill may or, intentionally, may not amend, for the purposes described above, including: ss. 624.411, 624.412, 624.441, 624.466(9), 625.50-625.65, 626.918(5), 627.828, 628.161(3), 629.131, 630.021-630.081, 630.161, 634.041(8), 634.052, 634.305, 634.405, 634.406, 636.046, 636.047, and 642.023, F.S.

But, in those sections where a *surety bond* is allowed as an alternative to a deposit, and for which the person is licensed by OIR, the bill provides that the *office* would be responsible for *all duties* related to the surety bond, since the Division of Treasury (under the *department*) has not historically had any role with regard to surety bonds.

Issues Related to Status of the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR) as Separate “Agencies”

Office of Inspector General - The bill amends s. 20.055, F.S., to require that the Dept. of Financial Services, the Office of Insurance Regulation, and the Office of Financial Regulation, each have an Office of Inspector General. Each office, as well as the department, would be defined as a *state agency* for the purposes of this section’s establishment of an Office of Inspector General in each state agency. The director of each of the two offices would be defined as the *agency head* who is authorized to appoint and remove the Inspector General.

Contracts with private attorneys - The bill amends s. 287.059(2)(a), F.S., to provide that the offices under the jurisdiction of the Financial Services Commission, i.e., the Office of Insurance Regulation and the Office of Financial Regulation are each exempt from the requirement that written approval of the Attorney General is required before an agency may contract with private attorneys to handle state business. The two offices would have the same exemption that is currently provided to the Executive Office of the Governor and any department under the exclusive jurisdiction of a single cabinet officer.

Membership and Appointment to Boards and Commissions

The 2002 act provides legislative intent that from January 7, 2003, until June 30, 2003, the CFO is to make all appointments to boards, commissions, (etc.), that were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal. The bill delegates continuing appointment authority for each of these boards and commissions (except for those boards and commission more closely related to Cabinet-related functions, which are addressed in SB 1488.) **The boards and appointments affected by the bill are in the following sections, some of which are not amended because *department* would be defined as the Department of Financial Services, rather than the Department of Insurance:**

s. 110.1227, F.S.- Board of directors of the Florida Employee Long-Term-Care Plan
Purpose: To assist the Dept. of Management Services and the Dept. of Elderly Affairs in implementing a self-funded or fully insured voluntary, long-term-care insurance plan for public employees.

Current Statute: The Insurance Commissioner appoints an actuary.

SB 1712: Changes Insurance Commissioner to CFO.

s. 112.215(8), F.S. - Deferred Compensation Advisory Council

Purpose: To provide assistance and recommendations to the Treasurer (now, CFO) relating to the Deferred Compensation plan for state employees, the insurance or investment options to be offered under the plan, and any other contracts or appointments deemed necessary by the council and Treasurer (CFO) to carry out the act.

Current Statute: The Treasurer appoints 1 member who is an employee of the Treasurer, and the Comptroller appoints 1 member who is an employee of the Comptroller (out of 7 total members).

CS/SB 1712: The CFO (instead of the Treasurer) appoints 1 member who is an employee of the CFO, and the Executive Director of the State Board of Administration (instead of the Comptroller) appoints 1 member who is an employee of the Executive Director of the State Board of Administration (out of 7 total members). (See Technical Errors, below.)

s. 215.555, F.S. - Board of Directors of the Florida Hurricane Catastrophe Fund Finance Corporation

Purpose: To issue bonds and engage in other financial transactions necessary to provide sufficient funds to meet the obligations of the Florida Hurricane Catastrophe Fund (“Fund”).

Current Statute: The Governor, Treasurer, and Comptroller, or their designees, the Director of the Division of Bond Finance of the State Board of Administration (SBA), and the chief operating officer of the Fund are members. (The SBA is the board of the Fund, itself.)

CS/SB 1712: The CFO and Attorney General, or their designees, replace the Treasurer and Comptroller as members, due to the constitutional change in the composition of the SBA, now composed of the Governor, CFO, and Attorney General. The *chief operating officer* of the Fund is replaced with the *senior employee of the State Board of Administration responsible for operations* of the Fund, because the SBA no longer has a position by that title, but it is the equivalent position.

s. 215.559, F.S. - Advisory Council for the Hurricane Loss Mitigation Program

Purpose: To provide consultation to the Dept. of Community Affairs for its development of programs to improve the wind resistance of residences and mobile homes and to retrofit facilities used as public hurricane shelters, relative to the \$10 million annually appropriated from the Florida Hurricane Catastrophe Fund.

Current Statute: The Dept. of Insurance designates 1 member.

CS/SB 1712: Changes Dept. of Insurance to CFO.

s. 215.56005, F.S. - Board of the Tobacco Settlement Financing Corporation

Purpose: To govern the corporation, established for the purpose of purchasing the state’s interest in the tobacco settlement agreement and issuing bonds to fund the Lawton Chiles Endowment Fund.

Current Statute: Effective January 7, 2003, the CFO or the CFO’s designee became a member in place of the Treasurer and Comptroller or their designees.

CS/SB 1712: Technical changes delete outdated language.

s. 216.235, F.S. - State Innovation Committee

Purpose: To approve innovative investment projects submitted by state agencies.

Current Statute: The Comptroller is a member.

CS/SB 1712: Changes Comptroller to CFO.

s. 218.325, F.S. - Uniform Chart of Accounts Development Committee

Purpose: To help implement a uniform financial reporting system for court and justice-related agency expenditures and revenues.

Current Statute: The Comptroller or his designee is a member.

CS/SB 1712: Changes Comptroller to CFO.

s. 280.071, F.S. - Qualified Public Depository Oversight Board

Purpose: To safeguard the integrity of the public deposits program (financial institutions holding public deposits) by establishing standards for financial institutions; to recommend to the Treasurer (now CFO) approval or rejection for exceptions and alternative participation agreements; and to review program violations and recommend penalties to the Treasurer (CFO).

Current Statute: The Treasurer must approve the 6 members who are selected by public depositories pursuant to statutory criteria.

CS/SB 1712: Changes Treasurer to CFO.

s. 282.1095, F.S. - Joint Task Force on State Agency Law Enforcement Communications

Purpose: To advise the State Technology Office of member-agency needs for the establishment of a statewide radio communications system to serve law enforcement agencies.

Current Statute: The State Fire Marshal (Treasurer) appoints a representative of the Division of State Fire Marshal of the Dept. of Insurance.

CS/SB 1712: The State Fire Marshal (CFO) appoints a representative of the Division of State Fire Marshal of the Dept. of Financial Services. (The CFO is designated as the State Fire Marshal in s. 633.01, F.S.)

s. 288.776, F.S. - Board of directors of the Florida Export Finance Corporation

Purpose: To govern the corporation, established for the purpose of expanding employment and income opportunities for Florida residents through increased exports of goods and services, by providing Florida businesses with technical and financial assistance on export opportunities.

Current Statute: The Comptroller or his designee is a member.

CS/SB 1712: Changes Comptroller to CFO.

s. 376.3075, F.S. - Board of the Inland Protection Finance Corporation

Purpose: To govern the corporation, established for the purpose of financing the rehabilitation of petroleum contamination sites and the payment of related reimbursement obligations of the Dept. of Environmental Protection.

Current Statute: The Treasurer and Comptroller, or their designees are members.

CS/SB 1712: Replaces Treasurer and Comptroller with CFO or his designee, who is a member (i.e., reduces membership by 1).

s. 381.90, F.S. - Health Information Systems Council

Purpose: A council consisting of executive-level managers for the state's health-related entities, to facilitate the sharing and coordination of health-related data.

Current Statute: The Treasurer or his senior executive-level designee is a member.

CS/SB 1712: Changes Treasurer to CFO.

s. 391.221, F.S. - Statewide Children's Medical Services Network Advisory Council

Purpose: To make recommendations to the Dept. of Health regarding the selection of health care providers for the Children's Medical Services network and the financial status and operation of the program.

Current Statute: Must have a member representing the Dept. of Insurance.

CS/SB 1712: Changes Dept. of Insurance to the State Fire Marshal (because the current DOI representative is an employee of the State Fire Marshal.)

s. 401.245, F.S. - Emergency Medical Services Advisory Council

Purpose: To make recommendations to the Dept. of Health regarding the emergency medical services program.

Current Statute: A representative of the Dept. of Insurance is an ex officio member.

CS/SB 1712: Changes Dept. of Insurance to State Fire Marshal because the current DOI representative is an employee of the State Fire Marshal.)

s. 403.1837, F.S. - Board of Florida Water Pollution Control Financing Corporation

Purpose: To govern the corporation, established for the purpose of financing the costs of water pollution control projects and activities.

Current Statute: Effective January 7, 2003, the CFO or his designee became a member, in place of the Treasurer and Comptroller or their designees.

CS/SB 1712: Technical changes delete outdated language.

s. 408.05, F.S. - State Comprehensive Health Information System Advisory Council (to assist the State Center for Health Statistics)

Purpose: To assist the State Center for Health Statistics in reviewing the comprehensive health information system and to recommend improvements to the system (which coordinates the activities of state agencies to assure the consistency and quality of health-care related data).

Current Statute: The Insurance Commissioner appoints an employee of the Dept. of Insurance.

CS/SB 1712: Instead, the CFO appoints an employee of DFS.

s. 408.7056, F.S. - Statewide Provider and Subscriber Assistance Program

Purpose: To assist subscribers who have unresolved grievances with managed care entities, by holding hearings and making recommendations to either the Dept. of Insurance (now OIR) or the Agency for Health Care Administration (AHCA) for imposing any sanctions against the managed care entity.

Current Statute: The panel includes (an unspecified number of) employees of the Dept. of Insurance and employees of the Agency for Health Care Administration (AHCA), chosen by the respective agencies (among other members).

CS/SB 1712: The panel would include the Insurance Consumer Advocate or designee thereof, two employees of AHCA, and two employees of the Dept. of Financial Services, chosen by their respective agencies. (The remaining members of the panel would be as provided under the

current law, including a consumer appointed by the Governor; a physician appointed by the Governor, as a standing member; and physicians who have expertise relevant to the case to be heard, on a rotating basis.)

s. 420.101, F.S. - Board of directors of the Housing Development Corporation of Florida

Purpose: To govern the corporation, established for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state.

Current Statute: The head of the Dept. of Insurance (Insurance Commissioner) and the head of the Dept. of Banking and Finance (Comptroller), or their designees are members.

CS/SB 1712: Instead, the head of the Dept. of Financial Services (CFO) or his designee with expertise in banking matters is a member, and a designee of the head of the Dept. of Financial Services with expertise in insurance matters is a member.

s. 440.13(12), F.S. - Three-Member Panel (for Workers' Compensation)

Purpose: To determine statewide schedules of maximum reimbursement allowances under workers' compensation for medical care provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment.

Current Statute: The Insurance Commissioner or his designee is a member.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 440.385, F.S. - Board of Directors of the Florida Self-Insurers Guaranty Association (for Workers' Compensation)

Purpose: To supervise the operation of the association, which guarantees payment of workers' compensation to employees of insolvent self-insured employer members. The board also recommends to the Dept. of Insurance (now, to DFS) the approval or disapproval of employers that apply to be self-insured, and makes recommendations for requirements of association membership and revocation of an employer's self-insurance privilege.

Current Statute: All 9 board members are appointed by the Dept. of Insurance upon recommendation of members of the association.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 497.101, F.S. - Board of Funeral and Cemetery Services

Purpose: To adopt rules and implement duties imposed on the board by ch. 497, for the regulation of cemeteries and the sale of preneed burial rights and preneed funeral or burial merchandise.

Current Statute: The board is created within the Dept. of Banking and Finance and consists of 7 members appointed by the Governor, from nominations made by the Comptroller and confirmed by the Senate.

CS/SB 1712: The board is created within the Dept. of Financial Services and consists of 7 members appointed by the Governor, from nominations made by the CFO and confirmed by the Senate.

s. 517.1204, F.S. -- Board of directors of the Investment Fraud Restoration Financing Corporation

Purpose: To govern the corporation, established for the purpose of financing remedial payments to investors who suffered monetary damages and received judgments against GIC Government Securities, Inc.

Current Statute: The assistant Comptroller is a member.

CS/SB 1712: Instead, the director of the Office of Financial Institutions and Securities Regulation (OFR) or his designee is a member. (Not assigned to the CFO because this is a regulatory matter previously administered by the Dept. of Banking and Finance.)

s. 553.74, F.S. - Florida Building Commission (administratively housed within Dept. of Community Affairs)

Purpose: To adopt rules to implement the provisions of the Florida Building Code and the provisions of ch. 553, F.S. (related to building construction standards, and related responsibilities).

Current Statute: A representative of the Dept. of Insurance is a member.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 626.2815(6), F.S. - Continuing education advisory board (for insurance agents)

Purpose: To advise the Dept. of Insurance (now, DFS) in determining standards by which continuing education courses for insurance agents may be evaluated and categorized as basic, intermediate, or advanced.

Current Statute: Insurance Commissioner appoints all 11 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 626.921, F.S. - Board of Governors of the Florida Surplus Lines Service Office (FSLSO)

Purpose: To supervise the operation of FSLSO, a self-regulating organization to permit better access by consumers to surplus lines insurers; to provide advice to consumers, surplus lines agents, insurers, and government agencies concerning the operation of the surplus lines market; and to collect the surplus lines tax from surplus lines agents. All licensed surplus lines agents must be a member of the association.

Current Statute: Dept. of Insurance appoints all 9 members.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 627.0613, F.S. - Insurance Consumer Advocate

Purpose: To represent the general public in any insurance matter or hearing.

Current Statute: The Insurance Commissioner appoints the consumer advocate, who reports directly to the Insurance Commissioner but is not otherwise under the authority of the Dept. of Insurance.

CS/SB 1712: The CFO appoints the consumer advocate, who reports directly to the CFO but is not otherwise under the authority of the Dept. of Financial Services.

s. 627.0628, F.S. - Florida Commission on Hurricane Loss Projection Methodology

Purpose: To adopt findings as to the accuracy or reliability of particular methods or models for hurricane loss projections used in residential property insurance rate filings. The findings of the commission are admissible and relevant in consideration of an insurer's rate filing by the Dept. of Insurance (now, OIR) or in any arbitration or administrative or judicial review.

Current Statute: The Insurance Commissioner appoints 6 of the 11 members (plus the Insurance Consumer Advocate).

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.311(3), F.S. - Board of the Florida Automobile Joint Underwriting Association

Purpose: To supervise the operation of the association which provides motor vehicle insurance to persons unable to obtain coverage in the voluntary market.

Current Statute: The Insurance Commissioner appoints 5 of the 11 board members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

Note: Section 627.351(1), F.S., also authorizes an automobile insurance risk apportionment plan, but does not specify board membership. Under that section, the plan of operation is approved by the Dept. of Insurance, which the bill changes to OIR (due to its role to regulate risk bearing entities, such as JUAs).

s. 627.311(4), F.S. - Board of Governors of the Florida Workers' Compensation Joint Underwriting Association

Purpose: To supervise the operation of the association, which provides workers' compensation insurance to employers who are unable to obtain coverage in the voluntary market.

Current Statute: The Insurance Commissioner appoints 2 of the board members (including the Insurance Consumer Advocate).

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.351(4), F.S. - Board of the Florida Medical Malpractice Joint Underwriting Association (FMMJUA)

Purpose: To supervise the operation of the FMMJUA, which provides medical malpractice insurance to health care providers who are unable to obtain coverage in the voluntary market.

Current Law: The board consists of representatives of five of the insurers participating in the FMMJUA, an attorney named by The Florida Bar, a physician named by the Fla. Medical Assoc., a dentist named by the Fla. Dental Assoc., and a hospital representative named by the Fla. Hospital Assoc. (The current plan of operation provides for the insurer representatives to be appointed by the Insurance Commissioner, as recommended by specified associations.)

CS/SB 1712: The CFO selects the representative of the five insurers, one selected from recommendations of the American Insurance Assoc., one selected from recommendations of the Alliance of American Insurers, one selected from recommendations of the National Assoc. of Independent Insurers, and two selected to represent insurers that are not affiliated with these associations. According to DFS, this is consistent with the current plan of operation of the FMMJUA.

s. 627.351(5), F.S. - Board of the Property and Casualty Insurance Risk Apportionment Plan

Purpose: To supervise the operation of the plan, which provides commercial property and casualty insurance to applicants who are unable to obtain such coverage in the voluntary market. (This plan is not currently in operation but would become active if certain lines of insurance are unavailable, as measured by a specified number of applications submitted to the Market Assistance Plan that cannot be placed with authorized insurers.)

Current Statute: The Insurance Commissioner appoints all 13 members of the board.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.351(6), F.S. - Board of Citizens Property Insurance Corporation (Citizens)

Purpose: To supervise the operation of Citizens, which provides residential property insurance statewide, and windstorm insurance in eligible coastal areas, to applicants who are unable to obtain such coverage in the voluntary market.

Current Statute: Effective January 7, 2003, the CFO (formerly, Treasurer) appoints all 7 members.

CS/SB 1712: Technical changes delete outdated language.

s. 627.4236, F.S. - Advisory Council to the Agency for Health Care Administration for rules related to health insurance coverage for bone marrow transplant procedures.

Purpose: To make recommendations to AHCA (which must be followed), based on a review of scientific evidence, for rules specifying the bone marrow transplant procedures that are not experimental and, therefore, may not be excluded by insurers or HMOs as experimental or investigative.

Current Statute: The Secretary of AHCA appoints one consumer representative from a list of three names recommended by the Insurance Commissioner.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.6488, F.S. - Board of Directors of Florida Comprehensive Health Association (FCHA)

Purpose: To supervise the operation of the FCHA, which provides health insurance to individuals who are unable to obtain coverage in the private market, due to their health status. (Since July 1, 1991, the FCHA has been authorized only to renew coverage.)

Current Statute: The chair is the Insurance Commissioner or his designee, and the Insurance Commissioner appoints the other 2 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.6699(11), F.S. - Board of the Small Employer Health Reinsurance Program

Purpose: To supervise the operation of the program, which provides reinsurance to participating small employer carriers for a portion of claims paid to identified high-risk employers and employees.

Current Statute: The Insurance Commissioner or his designee is chair and the Insurance Commissioner appoints the 13 other members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 627.6699(12), F.S. - Health Benefit Plan Committee

Purpose: To develop health benefit plans that must be sold by small group carriers, subject to approval by the Dept. of Insurance (now, OIR).

Current Statute: The Insurance Commissioner appoints all 11 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 631.56, F.S. - Board of Directors of the Florida Insurance Guaranty Association (FIGA)

Purpose: To supervise the operation of FIGA, which guarantees the payment of claims of insolvent property and casualty insurers.

Current Statute: Dept. of Insurance appoints not less than 5 or more than 9 persons recommended by the member insurers.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 631.716, F.S. - Board of Directors of the Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Purpose: To supervise the operation of FLAHIGA, which guarantees the payment of insurance claims of insolvent life and health insurers.

Current Statute: Members of the board are elected by member insurers, subject to the approval of the Dept. of Insurance.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 631.816, F.S. - Board of Directors of the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP)

Purpose: To supervise the operation of HMOCAP, which guarantees the payment of claims to providers, and the continuation of HMO coverage for six additional months for insureds, for insolvent HMOs.

Current Statute: The Dept. of Insurance appoints not less than five or more than nine persons recommended by the member HMOs.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services

s. 631.912, F.S. - Board of Directors of the Florida Workers' Compensation Insurance Guaranty Association

Purpose: To supervise the operation of FWCIGA, which guarantees the payment of claims of insolvent workers' compensation insurers and group self-insurance funds.

Current Statute: Dept. of Insurance appoints all 11 members, but 9 of the members are "selected by" private carriers or self-insurance funds.

CS/SB 1712: Changes Dept. of Insurance to Dept. of Financial Services.

s. 633.31, F.S. - Firefighters Employment, Standards, and Training Council

Purpose: To recommend to the Division of State Fire Marshal uniform minimum standards for the employment and training of firefighters, minimum curriculum requirements for schools that train firefighters, matters relating to the operation of the Florida State Fire College, and to consult with employing agencies and educational institutions concerning the employment and safety of firefighters.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints 4 of 13 members.

CS/SB 1712: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 633.511, F.S. - Florida Fire Safety Board

Purpose: To advise the State Fire Marshal regarding complaints and disputed administrative actions and to make recommendations for disciplinary actions at the request of the license holder, and to advise the Division of State Fire Marshal regarding rules, codes, standards, interpretations, and training.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints all 7 members.

CS/SB 1712: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 633.72, F.S. - Florida Fire Code Advisory Council

Purpose: To recommend to the State Fire Marshal changes to and interpretation of the uniform fire safety standards, the Florida Fire Prevention Code, and those portions of the code that conflict with building construction standards.

Current Statute: State Fire Marshal (Insurance Commissioner) appoints all 11 members, from lists of persons submitted by various associations.

CS/SB 1712: The CFO is designated as the State Fire Marshal in s. 633.01, F.S.

s. 768.105, F.S. - Board of Florida Patient's Compensation Fund (FPCF)

Purpose: To supervise the operation of the FPCF, which provides excess medical malpractice insurance to health care providers. (The FPCF is prohibited from issuing coverage unless the total premiums, based on applications, exceed a specified threshold, but it continues to operate to administer past claims.)

Current Statute: Insurance Commissioner appoints 7 of 11 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 766.315, F.S. - Board of Directors of the Florida Birth-Related Neurological Injury Compensation Association (NICA)

Purpose: To supervise the operation of NICA, which provides a type no-fault insurance coverage to hospitals and physicians for infants who suffer certain birth-related neurological injuries.

Current Statute: Insurance Commissioner appoints all 5 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 860.154, F.S. - Board of Motor Vehicle Theft Prevention Authority (within the Dept. of Legal Affairs)

Purpose: To apply for funds and to make grants related to the prevention of motor vehicle theft, to implement statewide plans and coordinate public efforts to combat auto theft, to adopt rules to ensure that public and private organizations are included in the development and implementation of plans adopted pursuant to the Florida Motor Vehicle Theft Prevention Act.

Current Statute: Insurance Commissioner or his designee is 1 of 9 members.

CS/SB 1712: Changes Insurance Commissioner to CFO.

s. 943.031, F.S. - Florida Violent Crime and Drug Control Council

Purpose: To advise the Dept. of Law Enforcement on the development and implementation of a statewide strategy to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including illicit money laundering.

Current Statute: The Comptroller or a designee is 1 of 14 members.

CS/SB 1712: Changes Comptroller to CFO.

Campaign Contribution Limitations; Financial Interest Restrictions

Campaign contribution limitations (repealed) - The bill repeals s. 627.0623, F.S., which currently prohibits insurers and their officers and affiliates from making a campaign contribution in excess of \$100 to the Treasurer or any candidate for that office and prohibits any employee of the Dept. of Insurance from soliciting a campaign contribution for the Treasurer or any candidate for that office from any insurer or affiliate.

The bill also repeals s. 655.019, F.S., which prohibits any financial institution which is licensed pursuant to chapters 655-665, F.S., and its officers and affiliates from making a campaign contribution in excess of \$100 to the Comptroller or any candidate for that office, and prohibits any employee of the Dept. of Banking and Finance from soliciting a campaign contribution for the Comptroller or any candidate for that office from any licensee or person who has an application pending for licensure.

There would be no campaign contribution limitations that would apply specifically to the office of the Chief Financial Officer, but other generally applicable laws limiting contributions would still apply.

Prohibited financial interests (repealed) - The bill repeals s. 624.305, F.S., which currently prohibits the Insurance Commissioner and Treasurer and any employee of the Dept. of Insurance (DOI) from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside compensation for services rendered as a DOI employee. (But, officers and employees of the affected agencies would remain subject to the requirements of part III of chapter 112, the Code of Ethics for Public Officers and Employees. The main section is s. 112.313, F.S, which establishes standards of conduct for public officers and employees of agencies relative to solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, salary and expenses, misuse of public position, conflicting employment or contractual relationships, disclosure or use of certain information, and post-employment restrictions. This part also requires disclosure of financial interests in s. 112.3144, F.S.)

Citizens Property Insurance Corporation

In order to conform to the 2002 act that created Citizens Property Insurance Corporation (Citizens), the bill adds references to Citizens and deletes references to the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and to the Florida Windstorm Underwriting Association (FWUA). In certain sections, related conforming changes are necessary. The sections affected by these changes are as follows:

Section 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund (Fund), is amended to specify that the Fund covers wind policies removed from Citizens, as well as from the RPCJUA and FWUA.

Section 624.4072, F.S., currently provides for minority-owned property and casualty insurers meeting certain requirements to be exempt from regular assessments (but not emergency assessments) levied by the RPCJUA or FWUA, which the bill change to Citizens.

Section 626.752, F.S., currently requires insurers to report to DOI (changed to DFS) the name, address, and other information for each agent from whom the insurer received more than 24 personal lines risks during the calendar year under the exchange of business statute (i.e., agents who are not appointed by that insurer). An exception is currently provided for risks removed from the RPCJUA, which the bill changes to Citizens.

The bill amends s. 627.0628, F.S., to provide that the Executive Director of Citizens, rather than the Executive Director of the RPCJUA, is a member of the Florida Commission on Hurricane Loss Projection Methodology. (See this section under *Membership and Appointment to Boards and Commissions*, above, for more information and other changes.)

Section 627.351(6), F.S., as amended in 2002, establishes and governs Citizens, which previously applied to the RPCJUA. But, due to another 2002 act¹⁸ that amended this section, certain references remain to *association* (referring to the RPCJUA) rather than *corporation* (the correct term to refer to Citizens), which the bill corrects by changing all references from *association* to *corporation*. Also, subsection (2), which applies to the FWUA, remains in the statutes even though its operations have been assumed by Citizens. A provision is added to clarify that the reference to *department* in that subsection means the former Dept. of Insurance.

The bill amends s. 627.3511, F.S., related to depopulation of the RPCJUA, to apply it to Citizens. This section specifies take-out bonuses that must be paid to insurers removing policies from the RPCJUA, under certain criteria, and bonuses that must be paid to agents, all of which are applied to Citizens. This section currently provides that the take-out policy is not required to provide wind coverage if the risk is located in an area where coverage is available through the FWUA. The bill changes the reference from the FWUA to the *high risk account* of Citizens, which is the name of the account for risks located in areas that were eligible for coverage in the FWUA.¹⁹ Note, however, that the RPCJUA had relied upon broader authority provided in s. 627.351(6), F.S., to provide take-out bonuses under criteria that the board approved, which now expressly applies to Citizens.

Section 627.3513, F.S., provides standards for the sale of bonds by the RPCJUA and FWUA which the bill applies to Citizens.

Section 627.3515, F.S., requires the Dept. of Insurance (now, OIR) to establish a market assistance plan to assist in the placement of risks who are unable to obtain property or casualty insurance for authorized insurers and to assist in the removal of risk from the RPJCUA, which the bill changes to Citizens.

See, *Repealed Statutes*, below, regarding s. 627.3516, related to the residual property insurance market coordinating council.

Updating References to Publications Cited for Regulatory Standards

The bill updates the publication date and, in some cases, the names of various publications of the National Association of Insurance Commissioners (NAIC) and the Actuarial Standards Board which are cited in the Florida Insurance Code for standards which insurance companies, HMOs, and the Dept. of Insurance (now, OIR and the commission) are required or authorized to use for various regulatory matters. The bill makes these changes in the following statutes:

- s. 624.316, F.S., authorizing the commission to adopt, by rule, the NAIC's *Market Conduct Examiners Handbook and the Financial Condition Examiners Handbook* (2002), to facilitate uniformity in market conduct examinations;
- ss. 624.404, 625.141, 625.151, and 625.325, F.S., requiring insurers and OIR to value securities in accordance with the *Purposes and Procedures Manual of the NAIC Securities Valuation Office* (July 1, 2002);

¹⁸ ch. 2002-221, L.O.F., the *Insurance Policy Holder and Protection Act*

¹⁹ S. 627.351(6)(b)2.(III), F.S.

- ss. 624.413 and 624.424, F.S., authorizing the commission by rule to adopt the form for financial statements approved by the NAIC in 2002, and to require the commission to adopt rules in substantial conformity with the *1998 Model Rule Requiring Annual Audited Financial Reports* adopted by the NAIC ;
- s. 624.610, F.S., authorizing the commission to adopt rules to implement provisions related to accounting for reinsurance in substantial compliance with the NAIC *Accounting Practices and Procedures Manual* as of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent;
- ss. 625.01115 and 641.19(16) F.S., defining the term *statutory accounting principles* as used in chapters 625 and 641, F.S., for insurers and HMOs, respectively, to mean accounting principles as defined in the NAIC *Accounting Practices and Procedures Manual* of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent; and
- s. 625.121(3), F.S., authorizing the commission to adopt rules providing standards for actuarial opinions consistent with those adopted by the Actuarial Standards Board on December 31, 2002, and subsequent revisions thereto, provided that the standards remain substantially consistent.

Electronic (Internet) Filings

The bill amends s. 624.424, F.S., to authorize the Financial Services Commission, by rule, to require reports or filings required under the Insurance Code to be submitted by electronic means in a computer-readable form, (amending the current law that authorizes the Dept. of Insurance, by rule, to require reports or filings to be submitted on a computer-diskette), compatible with the electronic data processing equipment specified by the commission.

Similarly, the bill amends s. 641.26, F.S., to requires HMOs to file their annual and quarterly financial statements by electronic means in a computer-readable form, rather than on a computer diskette, using a format acceptable to the office (OIR). The fee for electronically filing the annual report is the same \$150 fee currently required for filing by computer diskette (s. 641.29, F.S.)

Political Parties - Voting Percentages for Members of State Executive Committee

The bill amends s. 103.091, F.S., which currently provides that if a political party allows any member of the state executive committee to have more than one vote, then certain elected officials who are members of that political party must have a specified percentage of the votes. The bill provides that the CFO shall have 5 percent of the vote, and deletes the current requirement that the Treasurer and Comptroller must each have 5 percent of the vote. The bill maintains the 5 percent requirement that applies to each other member of the current Cabinet -- the Lieutenant Governor, the Attorney General, the and the Commissioner of Agriculture. The bill deletes the requirement that the Secretary of State and the Commissioner of Education each have 5 percent of the vote, due to those officers no longer being elected. All other voting percentages of other elected public officials are maintained as currently required (as specified in *Present Situation*, above). (There is no requirement for the voting percentages to add up to any specific figure, which would always be an unknown, due to whether a designated public official is a member of a particular political party.)

Repealed Statutes

The bill repeals the following sections of the Florida Statutes:

s. 17.06, F.S.; Disallowed items and accounts. -- Requires the Comptroller to erase from any original account all items disallowed by him or her, and to write "disallowed" on the face of any account rejected in whole. Repealed as an outdated procedure no longer followed.

s. 18.03, F.S.; Residence and office. -- Requires the Treasurer to reside at the seat of government and to keep his or her office in the capitol. The bill applies these requirements to the CFO in s. 17.02, F.S.

s. 18.09, F.S.; Delivery to Legislature -- Requires the Treasurer to submit a copy to the Senate and the House of Representatives the annual report to the Governor. The bill moves this requirement to s. 17.54, F.S., to apply to the CFO.

s. 18.22, F.S.: Rules. -- Authorizes the Treasurer to adopt rules related to ch. 18 (constitutional duties). Rulemaking authority for the CFO relative to constitutional duties is addressed in s. 17.29, F.S.

s. 20.12, F.S.; Dept. of Banking and Finance. -- Creates the Dept. of Banking and Finance. The 2002 act transferred the programs, employees, and trust funds of the Dept. of Banking and Finance to the Dept. of Financial Services and to the Financial Services Commission, which are created in s. 21.121, F.S. However, the 2002 act failed to repeal s. 20.12, F.S.

s. 20.13, F.S.; Department of Insurance -- Creates the Department of Insurance. The 2002 act transferred the programs, employees, and trust funds of the Dept. of Insurance to the Dept. of Financial Services and to the Financial Services Commission, which are created in s. 21.121, F.S. However, the 2002 act failed to repeal s. 20.13, F.S.

s. 440.135, F.S.; Pilot programs for medical and remedial care in workers' compensation. -- Authorizes the establishment of one or more pilot programs to be administered by the Dept. of Insurance related to monitoring medical care and 24-hour health insurance coverage, which terminate 2 years after operation, unless extended by the Legislature. Enacted in 1990 and amended in 1991 and 1993, the pilot projects have either been completed or were not implemented due to lack of insurer participation.

s. 624.305, F.S.; Prohibited interests, rewards. -- Prohibits the Insurance Commissioner and Treasurer and any employee of the Dept. of Insurance from having any financial interest in any insurer or insurance agency, except as a policyholder or claimant, or from receiving any outside compensation for services rendered as a department employee. (See discussion, above, in *Effects of Proposed Changes / Campaign Contribution Limitations; Financial Interest Restrictions*.)

s. 624.4071, F.S.; Special purpose homeowner insurance company. -- Authorizes formation of a special purpose homeowner insurance company to accelerate the restoration of the Florida homeowner insurance marketplace and to depopulate the RPJCUA. Prohibits issuance of a

certificate of authority to any such company after December 31, 1998. Repealed because there is no such company currently licensed and no new companies may be approved.

s. 624.463, F.S. -- Conversion of self-insurance fund. This section is still published but was repealed on October 1, 2001, by operation of a prior law.²⁰ It allows a self-insurance fund to become a domestic mutual insurer under a plan approved by the Dept. of Insurance, but even if repealed, approval (by OIR) is required pursuant to ch. 628, F.S.

s. 627.0623, F.S.; Restrictions on expenditures and solicitations of insurers and affiliates. Limits campaign contributions to the Treasurer. See, *Campaign Contribution Limitations; Financial Interest Restrictions*, above, for more detail.

s. 627.3516, F.S.; Residential property insurance market coordination council. -- Requires the FWUA and the RPCJUA to create a coordinating council to assure that each association is informed by the activities and plans of the other. Repealed due to Citizens Property Insurance Corporation having assumed the operations of the FWUA and RPCJUA.

s. 627.7825, F.S.; Alternative rate adoption. -- Establishes the premium rates that title insurers must charge from July 1, 1999, through June 30, 2002. Repealed because the rates are no longer in effect. (Beginning July 1, 2002, rates were established by rule of the Dept. of Insurance, which the bill changes to the commission.)

s. 655.019, F.S.; Campaign contributions; limitations -- Limits campaign contributions to the Comptroller. See, *Campaign Contribution Limitations; Financial Interest Restrictions*, above, for more detail.

s. 657.067, F.S.; Conversion from federal to state charter; requirements for application approval. -- Prohibits the Dept. of Banking and Finance from approving an application for conversion from a federally chartered credit union to a state charter for a specified period, which terminated July 1, 1999. Repealed because the prohibition has terminated.

ss. 657.25-657.269 (part II of ch. 657), F.S.; Florida Credit Union Guaranty Corporation, Inc.-- Creates the Florida Credit Union Guaranty Corporation, Inc. Repealed because such corporation no longer exists, due to operation of s. 657.269, F.S., which provides for dissolution of the corporation 6 months after all member credit unions receive certificates of insurance through the National Credit Union Administration, which has occurred.

Clarification of Impact of 2002 act and this act

The bill clarifies that this act and the 2002 act (ch. 2002-404, L.O.F.) do not affect the validity of any administrative or judicial action involving the Dept. of Banking and Finance or the Dept. of Insurance occurring prior to, or pending on, January 7, 2003, and the Dept. of Financial Services or the Financial Services Commission, or the respective office, as appropriate, shall be substituted as a party in interest on any such pending action. Also, any certificate of authority, license, form, rate, or other filing or action that was approved or authorized by the prior agencies

²⁰ Repealed October 1, 2001, by s. 188, ch. 91-108, L.O.F.

or that was otherwise lawfully in use prior to January 7, 2003, may continue to be used or be effective as originally authorized or permitted, until the appropriate new agency otherwise prescribes.

Effective Date

The act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill amends various sections that provide exceptions to the public records and open meetings requirements of the Open Government Act. The changes substitute references to the Dept. of Financial Services, Financial Services Commission, Office of Insurance Regulation, or Office of Financial Regulation, as appropriate, for current references to the Dept. of Insurance or the Dept. of Banking and Finance, consistent with the jurisdiction of each agency. Current exemptions are not expanded, so separate bills are not constitutionally required. This affects the following sections of the Florida Statutes: 215.053, 494.00125, 517.2015, 520.9965, 560.129, 626.989, 636.064, and 655.057, among others.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None. (See Government Sector Impact.)

C. Government Sector Impact:

Changes in this bill are substantially consistent with the 2002 act, but, the specific duties assigned to DFS, the commission, OIR, and OFISR may affect the appropriation and allocation of positions to each of these agencies in the General Appropriations Act, particularly for those areas where the jurisdiction may be unclear.

VI. Technical Deficiencies:

Section 126. (Deferred Compensation Advisory Council) - The bill requires that one member of this council shall be appointed by the Executive Director of the State Board of Administration and shall be an employee of the “Executive Director of the” State Board of Administration. A corrective amendment is necessary to delete the quoted phrase (on page 134, line 5).

Section 907. (Powers and duties of the department, commission and office, under ch. 626, F.S.) - Subsections (1) and (2) of s. 626.016, F.S., as created by the bill, appear to conflict with subsection (3). Subsections (1) and (2) limit the powers of the department and office, respectively, “in this chapter” to specific licensure categories, but subsection (3) limits powers “in this chapter” with respect to all licensees. A corrective amendment is necessary, to refer to the powers “in part I” for subsections (1) and (2), and to the powers “in parts VIII and IX” for subsection (3). Also, the reference in subsections (1) and (2) to “unlicensed persons under the regulatory jurisdiction of the department and office” would be unnecessary, and should be deleted.

Section 1569. (HMO Delinquency Proceedings) - As amended s. 641.284, F.S., incorrectly provides that a delinquency proceeding under chapter 631 or supervision by the “*office*” constitutes the sole and exclusive means of liquidating, reorganizing, rehabilitating, or conserving an HMO. A corrective amendment to re-insert the term *department* is necessary to be consistent with the other provisions of the bill.

Section 1644. (Civil Remedy Notices for Legal Expense Corporations) - As amended, s. 642.0475, F.S., incorrectly requires the civil remedy notice for legal expense corporations to be sent to the *office* (OIR), rather than the department, which is inconsistent with the civil remedy notices for insurers (s. 625.155, F.S.) and other civil remedy notices that must be currently be sent to the department. A corrective amendment is necessary to re-insert the term “department” on page 2024, line 19 (i.e., subsection (3) should be deleted from the bill and not amended).

VII. Related Issues:

Section 438. (Statewide Provider and Subscriber Assistance Program) - The bill amends s. 408.7056, F.S., to provide that the *department* (DFS) assumes *all* responsibilities of the former Dept. of Insurance, relative to the Statewide Provider and Subscriber Assistance Program. The *department* (DFS) would not only be represented on the panel that hears consumer complaints and makes recommendations, but also be the agency (in addition to the Agency for Health Care Administration) which may sanction the managed care entity or require it to take certain actions based on the panel’s recommendations. This appears to be inconsistent with its jurisdiction, since the Office of Insurance Regulation is responsible for all matters of regulation related to risk-bearing entities, including health maintenance organizations.

Mediation of disputed insurance claims - The bill is inconsistent with regard to the agency that administers mediation programs for disputed insurance claims. In s. 627.7015, F.S., the bill authorizes the *department* (DFS) to administer the mediation program for disputed *property* insurance claims. However, the bill amends s. 627.745, F.S., to provide that OIR is responsible

for administering the mediation of *motor vehicle* insurance claims. (Both programs were administered by the Division of Insurance Consumer Services under the former Dept. of Insurance.)

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
